

# **Planning Legislation (Fees and Other Matters) Amendment Regulation 2018**

Explanatory notes for SL 2018 No. 91

made under the

*Planning Act 2016*

*Regional Planning Interests Act 2014*

## **General Outline**

### **Short title**

*Planning Legislation (Fees and Other Matters) Amendment Regulation 2018.*

### **Authorising law**

Sections 112, 237 and 284 of the *Planning Act 2016* and section 95 of the *Regional Planning Interests Act 2014*.

### **Policy objectives and the reasons for them**

The objective of the *Planning Legislation (Fees and Other Matters) Amendment Regulation 2018* (Amendment Regulation) is to make amendments to the *Planning Regulation 2017* (Planning Regulation) to provide for the Annual Indexation of Fees, clarify provisions, correct drafting errors and improve planning processes.

The Amendment Regulation also amends the *Regional Planning Interests Regulation 2014* (Regional Planning Interests Regulation) to provide for the Annual Indexation of Strategic Cropping Land mitigation values and application fees.

#### Amendments to the Planning Regulation

The objectives of the amendments to the Planning Regulation are to:

- update fees in line with annual indexation and the Queensland Roads and Bridge construction index;

- remove the requirement for local government to include a statement of compliance in their local planning scheme;
- clarify the assessment manager for development applications for works that are tidal works but not prescribed tidal works within a local government area;
- ensure the fee charged by the State Assessment and Referral Agency (SARA) for particular development applications lodged over land designated for infrastructure reflects the work undertaken;
- clarify the application of fees for particular development applications relating to state transport corridors and operational work that is assessable development in tidal waters;
- correct various drafting omissions and errors discovered following commencement of the Planning Regulation on 3 July 2017;
- ensure there is consistency between examples listed in the definition of residential zone and the groupings of zones in schedule 2 of the Planning Regulation; and
- update the definition of the State Development Assessment Provisions (SDAP) to refer to the updated version approved by the Minister for Planning.

### *Fees*

Amendments to Part 4, Division 5, sections 35-37 and the examples in sections 33, 34, 35, 36, 36A and 38 and in Schedules 9, 10, 15 and 17 updates the fees charged by the State Assessment and Referral Agency (SARA) in line with the Government Index Rate of 3.5 per cent for the 2018-2019 financial year.

Amendments to Schedule 16 update the maximum amount for adopted charges for providing trunk infrastructure in line with annual increases. Adopted charges are indexed against the producer price index for construction, index number 3101 - Road and Bridge construction index for Queensland published by the Australian Bureau of Statistics, to account for increases in the cost of infrastructure over time. *Part 2 – Planning – regulated requirements*

The Planning Regulation requires local governments seek Ministerial satisfaction that State planning interests have been integrated into the planning scheme prior to including the statement of compliance.

The requirement to include a statement of compliance is problematic. The statement is a 'point in time' reference and can quickly become out-of-date, making it unreliable and creating uncertainty. Also, in some cases, the requirement to include the statement is resulting in a duplication of process and an unnecessary use of resources for both Local and State Government.

The amendment to Part 2 section 9 removes the mandatory requirement for local governments to include a statement of compliance with State planning instruments in local government planning schemes.

The removal of the requirement does not prevent a local government from communicating how it has considered state planning instruments, which can then be updated as required.

### *Tidal works – assessment manager for development applications*

The assessment manager for development applications for tidal works that is not prescribed tidal works is unclear. The amendment to Schedule 8, table 4, item 3(1)(i) clarifies the assessment manager for these development applications.

### *Development assessment fees*

Development applications lodged over land designated for infrastructure are, in some cases, referred to the Chief Executive through the State Assessment Referral Agency (SARA). The fee charged for assessment of these applications does not currently reflect the work undertaken by SARA to complete its assessment. The amendment to Schedule 10, Part 9, Division 1, table 1 reduces the fee charged for these applications.

The amendment to Schedule 10, Part 9, Division 4, Subdivision 2, tables 1, 4, 5 and 6 clarifies the fee structure for referrals relating to state transport corridors by providing examples to aid application of the fees.

The amendment to Schedule 10, Part 9, Division 4, Subdivision 2, table 4, item 8(b) clarifies the fees that are applicable when a development application is within 100 metres of a State controlled road.

The amendment to Schedule 10, part 17, Division 3, table 2 clarifies the fee applicable for small private prescribed tidal works, such as a deck. This change makes the fee payable consistent with the fee included that would have applied under the now repealed *Sustainable Planning Regulation 2009* (Sustainable Planning Regulation).

### *Correcting drafting omissions and errors relating to the transition of provisions from the (repealed) Sustainable Planning Regulation*

The amendment to Schedule 7, part 3, section 5(2)(b) and Schedule 10, Part 19, Division 1, Subdivision 1 section 29 (c)(i) and (ii) includes reference to section 1046 of the *Water Act 2000* to ensure certain sub-artesian bores are included as accepted development or assessable development, in accordance with the Water Act. This change aligns the Planning Regulation with provisions under the (repealed) Sustainable Planning Regulation.

The amendment to Schedule 19, Part 2 corrects a spelling and drafting error relating to wall wetting sprinklers.

The amendments to Schedule 21, Part 1, section 1(1)(b)(i) and section 1(16) correct errors and administrative changes that occurred in the drafting of the Planning Regulation. The changes will ensure:

- the exemption applies to a lot, rather than premises;
- the exemption provision includes a maximum area of 100m<sup>2</sup>, not 10m<sup>2</sup>;
- that any cadastral survey undertaken within this exemption relates to an existing property boundary; and
- that any clearing necessary for access relates to the area required to be surveyed.

The amendment to Schedule 22, Part 4, section 11 (1)(v) corrects the *Planning Act 2016* reference relating to the retention of documents about notices of appeal given to the chief executive.

The definitions of exempted development in Schedule 24 is updated so that it reflects the definition in the (repealed) SEQ Koala Conservation State Planning Regulatory Provision.

### *Definition – residential zone*

The definition of residential zone in Schedule 24 is amended so that the examples are consistent with the zones categorised as residential in Schedule 2 ‘Zones for local planning instruments’.

### *State Development Assessment Provisions*

The State Development Assessment provisions (SDAP) have been amended to reflect legislative amendments introduced through the *Vegetation Management and Other Legislation (VMOLA) Act 2018*, which commenced on 9 May 2018. Some minor refinements have also been made to improve clarity of the document. The definition of State Development Assessment Provisions is amended to prescribe the commencement of the revised version of SDAP.

### Amendments to the *Regional Planning Interests Regulation*

Fees for the referral and assessment of development within strategic cropping land areas are prescribed in the *Regional Planning Interests Regulation*. The amendments provide for the Annual Indexation of mitigation values under section 16 and application fees under schedule 4 of the *Regional Planning Interests Regulation*. The amendments apply the Queensland Treasury approved annual indexation rate of 3.5% to these values and fees for 2018-2019.

## **Achievement of policy objectives**

### Amendments to the *Planning Regulation*

#### *Fees*

The *Planning Regulation* prescribes:

- Assessment Manager and Concurrence Agency fees (SARA) – Part 4, Division 5, sections 35-37 and examples in 33,34,35,36,36A and 38, Schedules 9, 10 and 15;
- Prescribed amounts – Schedule 16; and
- Development Tribunal fees – Schedule 17.

Queensland Treasury advises that the Government indexation rate for fees and charges from 1 July 2018 – 30 June 2019 will be 3.5 per cent.

The prescribed amounts in Schedule 16 are indexed against the producer price index for construction, index number 3101 - Road and Bridge construction index for Queensland (PPI) published by the Australian Bureau of Statistics, to account for increases in the cost of infrastructure over time. The *Planning Act 2016* (section 112) automatically indexes adopted charges by the three-year moving average of the PPI.

#### *Part 2 – Planning – regulated requirements*

The amendment means that local governments will no longer be required to include a statement of compliance with State planning instruments in local government planning schemes. A local government may choose to communicate how its planning scheme integrates State planning instruments and this can then be updated as required.

#### *Tidal works – assessment manager for development applications*

The amendment clarifies the relevant assessment manager for applications that are tidal works.

*Development assessment fees*

The amendment to Schedule 10, part 9, division 1, table 1, relating to Infrastructure related referrals, ensures that the relevant fee is consistent with the cost recovery for the assessment of these applications.

The amendments to Schedule 10, part 9, division 4, subdivision 2, tables 1, 4, 5 and 6 clarify which fee applies in particular circumstances.

The amendment to Schedule 10, part 17, division 3, table 2 provides that the fee for a deck, or other structure, that is for private use, other than a structure mentioned in Schedule 10, part 17, division 3, table 2, item 8(a)(i) is \$1,619.00.

*Correcting drafting omissions and errors relating to the transition of provisions from the (repealed) Sustainable Planning Regulation.*

The amendment to Schedule 7, part 3, section 5(2)(b) provides that operational work, other than PDA-related development, that involves taking or interfering with underground water if the works are prescribed as accepted development under the *Water Act 2000*, section 1046(2)(b), is accepted development.

The amendment to Schedule 10, part 19, division 1, subdivision 1 section 29 (c) provides that operational work that involves taking or interfering with underground water, if the work is assessable development under the *Water Act 2000*, section 1046(2)(b) is assessable development, unless the work is PDA-related development or accepted development under schedule 7, part 3, section 5.

The amendment to Schedule 19, part 2, corrects the spelling of wall-wetting sprinklers and removes duplicated requirements.

The amendment to Schedule 21, part 1, section 1(1)(b)(i) clarifies that clearing vegetation under a development approval for a material change of use or reconfiguring a lot, if the approval relates to a lot of less than 5ha and is for a development application for which a local government is the prescribed assessment manager is exempt clearing work.

The amendment to Schedule 21, part 1, section 1(16) provides that the following is exempt clearing work:

(16) Clearing vegetation that is necessary to carry out a cadastral survey of an existing property boundary, geotechnical survey or geological survey, if the area cleared is:

- (a) for an area in which the survey is conducted is a maximum area of 100m<sup>2</sup>; and
- (b) for an area necessary for reasonable access to an area in which a survey is conducted under paragraph (a) – 10m wide.

The amendment to Schedule 22, Part 4, section 11 (1)(v) requires that the chief executive must keep each notice of appeal given to the chief executive under section 230(3)(f) of the *Planning Act 2016*.

The amendment of the Schedule 24 definition of “exempted development” to part (e) ensures alignment with the definition contained within the (repealed) SEQ Koala Conservation State Planning Regulatory Provisions, as follows:

(e) development that results in –

- (i) a total area of 500m<sup>2</sup> or less being cleared of native vegetation; or

- (ii) a development footprint of 500m<sup>2</sup> or less; or
- (iii) a total area of 5,000m<sup>2</sup> or less of gravel, rock or sand being extracted; or
- (iv) a total area of 5,000m<sup>2</sup> or less being excavated or filled.

#### *Definition – residential zone*

The examples contained in the definition of “residential zone” in Schedule 24 are consistent with the zones included under the Residential zones heading in Schedule 2.

#### *State Development Assessment Provisions*

Schedule 24 gives effect to the SDAP. The publication date has been amended to 2 July 2018 to reflect the latest version of SDAP. The previous version was 9 March 2018.

#### Amendments to the *Regional Planning Interests Regulation 2014*

Policy objectives are also achieved in amendments to the Regional Planning Interests Regulation through the annual indexation of mitigation values and application fees.

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

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

The Amendment Regulation is consistent with the main policy objectives of the *Regional Planning Interests Act 2014*, that is, to ensure the regulation prescribes appropriate fees and charges which retain their relative value over time.

## **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 State Development, Manufacturing, Infrastructure and Planning. The amendments are the only way of achieving the policy objectives for these matters.

## **Benefits and costs of implementation**

The package of amendments will have the following benefits:

- updating the SARA fees, Development Tribunal fees in line with the Government Indexation Rate;
- updating the prescribed amounts in line with the Roads and Bridge Construction Index for Queensland;

- removing the mandatory requirement for a local government to include a statement of compliance with State planning instruments;
- providing greater clarity and certainty in relation to the assessment manager for tidal works and the fees that apply for certain development applications;
- reducing the fees required to be paid by applicants in line with cost recovery;
- correcting drafting omissions and errors relating to the transition of provisions from the (repealed) Sustainable Planning Regulation;
- ensuring the consistency in definitions with other sections of the Planning Regulation; and
- ensuring that the latest version of 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 to the regulation have been developed in conjunction with the relevant State agencies.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission was also consulted under the *Queensland Government Guide to Better Regulation* to determine if further assessment was required under the Regulatory Impact Analysis (RIA) system for amendments to the Planning Regulation to remove the requirement for local planning schemes to include a ‘statement of compliance’ and reduce the fee for referral of infrastructure related development applications to the State for assessment.

OBPR advised that the proposed amendments regarding the ‘statement of compliance’ and the fee reduction are excluded from further regulatory impact analysis under the Guidelines under exclusion category (k) – regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant impacts.

The remaining amendments fall under the following agency assessed exclusion categories:

- (f) regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice;
- (g) regulatory proposals that are of a machinery nature; and
- (h) regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor.