

Planning (COVID-19 Emergency Response) Regulation 2020

Explanatory notes for SL 2020 No. 101

made under the

COVID-19 Emergency Response Act 2020
Planning Act 2016

General Outline

Short title

The short title of the regulation is the *Planning (COVID-19 Emergency Response) Regulation 2020*.

Authorising law

Section 9 of the COVID-19 Emergency Response Act 2020 (COVID-19 Act)
Section 284 of the *Planning Act 2016* (Planning Act)

Policy objectives and the reasons for them

The ability for people to meet requirements under Queensland's planning framework, including the Planning Act, Planning Regulation 2017 and supporting statutory instruments (including the Development Assessment Rules) which regulate planning and development in Queensland is being impacted by the COVID-19 public health emergency.

The recent announcement that several regional and community newspaper publications will become digital-only publication or close as a result of COVID-19 will make it difficult for statutory requirements in relation to public notifying development applications and change applications to be met.

Under the Planning Act, a development application that is impact assessable must be publicly notified. Generally, it is the applicant's responsibility to publicly notify their development application or change application which includes publishing a notice at least once in a hard copy newspaper circulating generally in the area of the proposed development.

These notices are a core aspect of the public notification process for ensuring the public are aware of, and able to provide comment on, development applications and change applications within their localities. There is an immediate need to provide for alternative methods of public notification of development applications during and while recovering from the COVID-19 public health emergency.

Additionally, as a result of social distancing requirements, work from home arrangements and reduced staff resourcing and capacity, local governments and other entities key to the successful operation of the planning framework cannot meet statutory obligations to make available certain planning and development related documents for inspection and purchase, or inspection only, by those who wish to comment on proposed planning and development related matters.

Public notification gives a person an opportunity to make submissions about a development application and secures for that person the right of appeal to the court about the assessment manager's decision. Public involvement in the planning and development assessment system is an essential component of the system.

It is therefore critical to maintain public involvement in planning and development related matters during and while recovering from the COVID-19 public health emergency.

In response to these issues, the purpose of the *Planning (COVID-19 Emergency Response) Regulation 2020* (the regulation) is to grant necessary relief from the statutory requirements under the Planning Act that are impacted upon by the COVID-19 public health emergency.

The policy objectives of this regulation are to:

- ensure the ongoing effective operation of the planning framework;
- modify statutory obligations that cannot be met due to changes brought about by the COVID-19 public health emergency; and
- continue to provide opportunities for community awareness and involvement with planning and development decision within their local area.

Achievement of policy objectives

The policy objectives of the regulation are achieved by:

- modifying requirements under the Planning Act for public notification of development applications and change applications to ensure communities can continue to be adequately informed of development proposals, despite social distancing measures and disruption of hard copy local and regional newspapers. This will be achieved through alternate requirements that are responsive to localised circumstances which will replace the existing newspaper notice requirement by:
 - where hard copy local newspaper is circulating in the area of the proposed development, requiring a notice to be placed at least once in the hard copy local newspaper; or
 - where a local newspaper is only available in digital format, requiring a notice to be placed at least once in the digital version of the local newspaper; or
 - where neither a hard copy or digital local newspaper exists, requiring a notice be placed in a newspaper with a state-wide distribution or, subject to agreement from an assessment manager, giving notices to the occupiers of properties in the vicinity of the subject land, or publishing a notice on an assessment manager's website.
- providing for alternative arrangements under the Planning Act for planning authorities to keeping documents physically available for inspection and purchase, or inspection only.

Modified public notification arrangements

The regulation modifies the operation of section 53 of the Planning Act and section 17 of the Development Assessment Rules by setting alternatives to publishing a notice about a development application or change application in a hard copy newspaper circulating generally in the locality the subject of the application.

The modified provisions will apply from commencement until 31 December 2020 when the *COVID-19 Emergency Response Act 2020* (the COVID-19 Act) and this regulation expire.

The modified provisions centre around providing that where a local hard copy newspaper continues to circulate in the area of the development application or change application, that method of notification is to be used. However, should there be no hard copy newspaper in circulation, but an online local newspaper is available in the locality, then that online method of notification is to be used.

The term local newspaper has been defined within the regulation. The definition is intended to capture newspapers within Queensland with a local or regional scale readership, rather than state-wide or nation-wide readership.

In the circumstances where there neither a hard copy nor online local newspaper is available; the regulation provides for three alternative options:

- publishing a notice in a state-wide hard copy or online newspaper;
- giving notices to the occupier of properties in the vicinity of the subject land; or
- publishing a notice on an assessment manager's website.

This approach is intended to promote the ongoing use of local and regional scale hard copy newspapers wherever possible noting the important role that many local hard copy newspapers have for their townships and communities, particularly in rural areas where access to internet may be limited. The use of digital publications is therefore only intended to be used where no hard copy local newspaper exists including where the local newspaper for the locality has become online only publication.

In the situation where neither a hard copy nor online local newspaper is available; the use of state-wide or nation-wide newspapers may be relied upon. Alternatively, with the agreement of the assessment manager, notices may be given to occupiers of land within an "identified area". An identified area is intended to be a geographic area around the development site the subject of the development application or change application that an assessment manager considered has occupiers likely to be interested in the application. To reduce regulatory burden, the regulation requires notices to be given to occupiers and not owners of lands within the identified area.

The remaining alternative notification method of publishing a notice on an assessment manager's website requires the notice to be able to be viewed online until the last day on which a submission on the development application or change application can be made. In this section the regulation may only apply if the 'stated day' in the notice is between the commencement and 18 December 2020 (noting that 19 December 2020 is not a business day). This means that the full notification period must be completed by 18 December 2020 where this method is used. The 18 December 2020 date recognises the effect of section 53(12) of the Planning Act which 'blocks out' 20 December of a year to 5 January of the following year.

The ordinary requirements under section 53 of the Planning Act and section 17.1(b) and (c) of the Development Assessment Rules to place signage on the premises of the subject of the development application and the giving of notices to the owners of all lots adjoining the premises the subject of the development application remain unchanged by this regulation and will continue to apply.

The availability to an applicant of some of the options will depend on the entity responsible for deciding the development application or change application having, or establishing, necessary processes or procedures:

- for giving notices to occupiers in the vicinity of the subject land – identifying the area of interest for the application;
- for placing notice on a website– providing access to the assessment managers website.

Modified arrangements for making documents available for inspection and purchase, or inspection only

Additionally, as a result of social distancing requirements, local governments and other entities may not be able to meet statutory obligations to make available certain planning and development related documents for inspection and purchase, or inspection only, by those who wish to comment on proposed planning and development related matters. The regulation provides modified requirements for physical access to documents that ensure planning and development assessment documents and information remains publicly accessible despite any health and safety restrictions in place.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the authorising law.

The regulation meets the purpose of the COVID-19 Act which includes to protect the health, safety and welfare of persons affected by the COVID-19 emergency and to facilitate the continuance of public administration.

The COVID-19 Act provides that a regulation may be made to provide alternative arrangements for how documents are made, meetings are held, and attendances are conducted in order to minimise the need for people to be proximate to other people.

The provisions in the regulation provide alternative arrangements to those otherwise provided for under the Planning Act to allow for continued social distancing measures and for alternative measures for public consultation to overcome any potential limitations on public awareness (including due to the disruption of hard copy newspapers), ensuring continued public involvement in the development assessment process.

The regulation supports the purpose of the Planning Act which includes the provision of an efficient, effective and transparent system for land use planning and development assessment and providing opportunities for the community to be involved in making decisions.

The regulation will automatically expire on 31 December 2020.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

The policy objectives could be achieved through amendments to the Planning Act and its statutory instruments; however, this would not allow for a timely response to the limitations/issues being experienced in response to COVID-19. Additionally, amending the Planning Act and statutory instruments would require further amendments once the provisions responding to COVID-19 are no longer required.

Benefits and costs of implementation

The regulation allows for the timely response to issues the planning framework is experiencing as a result of COVID-19. By introducing alternative measures for the provision of documents and undertaking public consultation, the regulation allows the continued good public administration of the planning framework.

The regulation is temporary in effect and will expire on 31 December 2020.

There are no anticipated costs associated with this regulation. However, it is acknowledged there may costs incurred by individual applicants and assessment managers based on the alternative public notification measures introduced as options as a result of this regulation.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

The regulation functions as allowed under the COVID-19 Act modification framework. The modification framework allows legislative requirements within primary legislation to be modified through an 'extraordinary regulation'. The modification framework permits secondary instruments to contain "Henry VIII" type provisions that modify the operation of related primary legislation. This allows for decisive executive action to be taken to facilitate the continuance of public administration and other activities disrupted by the COVID-19 emergency.

The provisions in this extraordinary regulation override provisions in the Planning Act and its associated statutory instruments. However, these provisions are still consistent with the policy objectives and purpose of the Planning Act.

Consultation

Due to its urgent nature, no consultation on the regulation has been undertaken. However, Queensland Treasury has been in regular contact with local governments and other key stakeholders including the Local Government Association of Queensland to understand their

operational capacity and ability to meet their statutory requirements and community expectations under the planning framework.

The regulation has been afforded an exemption from the Regulatory Impact Assessment Process. The Queensland Productivity Commission has advised that under *The Queensland Government Guide to Better Regulation*, the regulation is excluded from further regulatory impact analyses as it falls within category (k) “regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the regulatory burden, and it is reasonably clear there are not significant impacts.”