

# Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 197

made under the

*COVID-19 Emergency Response Act 2020*  
*Planning Act 2016*

## General Outline

### Short title

*Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020*

### Authorising law

Section 13 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 objectives of the *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020* are to:

1. give effect to updated Development Assessment Rules (DA Rules);
2. give effect to updated Ministers Guidelines and Rules (MGR);
3. reduce unnecessary regulation;
4. ensure that the level of assessment for certain development is proportionate to the potential impacts and level of risk of the development being regulated; and
5. provide local government with a quick 'opt in' method that supports local economic growth.

The circumstances of COVID-19 have seen many businesses faced with unique challenges. These challenges range from monitoring and maintaining social distancing guidelines to exploring new ways of conducting business and providing products and services to customers. Some Queenslanders are considering opening new businesses, moving business premises or are embracing business diversification to adapt and sustain operations.

The principal objective of the Amendment Regulation is to support the statewide economic recovery initiative by streamlining statutory planning processes for local government,

business and the development industry, whilst still maintaining the integrity of the planning framework.

The Amendment Regulation provides opportunities to tailor certain development assessment to limit the impact on business, keep regulatory costs down and allow for employment and economic growth to prosper.

## **Achievement of policy objectives**

### ***Updating the currency date of the Development Assessment Rules***

The Amendment Regulation updates the currency date of the DA Rules within the Planning Regulation to 2 September 2020.

Through a separate process under the Planning Act, the DA Rules have been amended to make elements of the temporary public notification changes under the *Planning (COVID-19 Emergency Response) Regulation 2020* more permanent arrangements. This recognises that even after the COVID-19 emergency, many local newspapers may not return to hard copy production. In addition, the DA Rules have been amended to improve other aspects of public notification for development applications.

### ***Updating the currency date of the Ministers Guidelines and Rules***

The Amendment Regulation updates the currency date of the MGR within the Planning Regulation to September 2020.

Through a separate process under the Planning Act, the MGR have been amended to streamline some of the processes for the Minister and Local Governments to support the more efficient delivery of critical infrastructure, such as schools and hospitals. The amendments to the MGR also clarify the process for amending a local government infrastructure plan (LGIP). This will ensure local governments are able to more effectively and frequently make updates to LGIP's in line with planning scheme amendments.

### ***Economic support instruments***

The Amendment Regulation includes provisions that seek to reduce barriers to new businesses opening, or existing businesses relocating and/or adapting to operational challenges. These changes are aligned to where a particular type of development is reasonably anticipated and compatible with the zone intent. In doing so, development within certain zones will be aligned more closely with existing community expectations. Importantly these proposed changes will not be mandatory but will be an "opt in" choice for each local government.

The economic support instrument amendments will be in place from commencement until 17 September 2020 and local government can 'opt in' by resolution at any point during that period to one or more of the economic support provisions. Local government can also 'opt out' of one or all proposals they had 'opted in' to, at any time by resolution.

The economic support provisions:

- make certain material change of uses accepted development within an existing building, if the business is expected in that zone and only minor building work will occur, removing the need for a planning approval for a change in tenancy. This is

provided that the requirements of identified applicable assessment benchmarks are met;

- reduce the level of assessment to code assessment for certain businesses seeking to establish where the use is expected in that zone. This is provided that the requirements of identified applicable assessment benchmarks are met;
- make certain building work accepted development to allow businesses to make minor expansions, up to 10 percent or 100m<sup>2</sup>, whichever is lesser. This is provided that setback requirements are maintained, the building work is not undertaken on or adjacent/adjoining a state or local heritage building, there is no operational works for vegetation clearing or reduction in parking or landscaping; and
- allow home-based business in the township zone and residential zones, as accepted development to support local economies. This is provided that no industry activity takes place and the acoustic quality objectives are met in the Environmental Protection (Noise) Policy.

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

The Amendment Regulation is consistent with the policy objectives of the Planning Act to establish an efficient, effective, transparent and accountable system of land use planning and development assessment. The Amendment Regulation streamlines development assessment to easily enable low risk, economic value-adding uses to operate in certain zones.

The Amendment Regulation is consistent with the objectives of the COVID-19 Act to protect the health, safety and welfare of the persons affected by the COVID-19 emergency and to facilitate the continuance of public administration and small business. The Amendment Regulation permanently improves public notification for development applications and change applications by giving effect to updated DA Rules.

## **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**

Amending the currency date of the DA Rules and MGR within the Planning Regulation is the only way to give effect to updated DA Rules and MGR.

There are three alternative ways of achieving the policy objectives of the economic support initiatives through the operation of a planning scheme:

- a local government resolves to make a new planning scheme (may take up to two years to complete)
- a local government resolves to make a planning scheme amendment (may take 12 to 18 months to complete)
- a Temporary Local Planning Instrument (TLPI) made by either State government or individual local governments (once completed, in operation for up to two years).

The MGR contain the guidelines and rules for making and amending local planning schemes and TLPI's. TLPI's can suspend or otherwise affect the operation of the Planning Scheme for a period of up to two years from its effective date.

The above three alternative ways of affecting the operation of a planning scheme are time consuming and would need to be undertaken for each local government separately. The Queensland Government economic recovery necessitates a timelier statewide response to deregulating low risk, economic value-adding uses in certain zones. Amending the Planning Regulation and allowing local government to 'opt in' is a more efficient and effective way of achieving the policy objectives.

## **Benefits and costs of implementation**

The economic support provisions of the Amendment Regulation benefit certain low risk businesses, local governments and the state by:

- facilitating the removal of unnecessary barriers to certain land uses establishing in areas (zones) where they are expected by the community and compatible with the area (zone). This removes the need for local governments across Queensland to amend their planning schemes or prepare Temporary Local Planning Instrument's (TLPI's) to achieve the same effect.
- removing the need for state government to process multiple, individual planning scheme amendments or TLPI's to ensure the same intent and application throughout Queensland.
- when the subject land use is expected by the community and compatible with the area (zone), removing the need for certain low risk businesses to obtain planning approval before establishing in an existing building.
- where certain low risk businesses which are consistent with the area (zone) and are able to be assessed against assessment benchmarks, removing the requirement for public consultation.

By removing the need for planning approval only in certain low risk circumstances, the associated development application fees and administrative burden on community members establishing a new business or moving premises is also removed.

The process for local government to adopt and apply economic support provisions is simple. There are no fees for local government associated with adopting and applying economic support provisions. Prior to opting into an economic support provision each local government will consider any impacts on revenue that were anticipated from infrastructure charges and on that basis, decide the overall benefit of opting in.

The updated versions of of the DA Rules and MGR are given effect by the Amendment Regulation. These updates ensure the planning system continues to operate efficiently and effectively and maintain the integrity of the planning and development assessment framework established under the Planning Act.

## **Consistency with fundamental legislative principles**

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA Act). Any potential inconsistencies with FLPs are addressed below.

**Legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act - LSA, section 4(5)(e)**

Part 8B prescribes a process to enable a local government to make an economic support instrument for its local government area in accordance with the *Planning Regulation 2017* and to determine the timeframe for which that instrument will apply.

The principal objective of the Amendment Regulation is to support the statewide economic recovery initiative by streamlining statutory planning processes for local government, business and the development industry, whilst still maintaining the integrity of the planning framework.

An economic support instrument adopted by a local government applies, on a temporary basis, the provisions of the Amendment Regulation that:

- reduces the level of assessment for certain uses to code assessment;
- makes certain building work accepted development; and
- makes certain material change of uses involving existing buildings, as well as home based businesses accepted development.

When it does so, the provisions would apply in place of some provisions in their planning scheme. For example, the Amendment Regulation provides that the effect of adopting an economic support instrument may be to reduce the level of assessment to code assessment for certain uses in identified zones that are currently identified in a local planning instrument as requiring impact assessment.

This approach is optional and provides an option for local governments to opt-in where they consider the approach would be beneficial for their local government area in supporting economic recovery. Where a local government has provisions within a local planning instrument that already achieve some or all of the outcomes of this approach, a local government may choose not to adopt an economic support instrument.

The local government may only make an instrument between the time the Amendment Regulation takes effect and 17 September 2021, and this is a temporary measure to support the State's economic recovery from the impacts of the COVID-19 public health emergency.

Reducing the level of development assessment for certain economic value-adding uses to operate in envisaged zones, reduces unnecessary barriers to new businesses opening up, supports employment and stimulates the Queensland economy, which is in the overall benefit of the public interest.

This approach is justified through a number of features of the proposed amendments including:

- new part 8B will set up processes that must be followed by local governments for this approach to be implemented
- the Amendment Regulation includes requirements for the publication of notices and other information at a local government level and on the department's website that ensure there is visibility/transparency to the public about the application of the economic support provisions

- local governments will only be able to adopt an economic support instrument for a limited period of time and will only have effect for a limited operational period
- the provisions are limited to particular uses and zones
- the provisions will support economic stimulation by reducing regulatory requirements during the period that a local government may adopt an economic support instrument
- the approach will enable low risk economic value-adding uses to establish and operate in compatible zones across the State.

## Consultation

Public consultation on the DA Rules, MGR and the policy intent for the economic support initiatives occurred for 20 business days from the 8 July 2020 to 7 August 2020.

A virtual town hall meeting was held on 14 July 2020. A recording of the meeting and a copy of the presentation were also made available on the Queensland Government's 'have your say' website during the public consultation period.

The regulation has been afforded an exemption from the Regulatory Impact Assessment Process by the Office of Best Practice Regulation (OBPR). The OBPR within the Queensland Productivity Commission has advised that the Amendment 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.”

An agency-assessed exclusion by Queensland Treasury, for the amendment to the *Planning Regulation 2017* to update the currency dates of the DA Rules and MGR has determined that the proposal is excluded under category (g) – “Regulatory proposals that are of a machinery nature” (the criteria relevant to this category includes “updates thresholds and dates”) and category (a) – “Regulatory proposals that make consequential amendments.”