

Local Government Legislation (Boundary Changes and Other Matters) Amendment Regulation 2023

Explanatory Notes for SL 2023 No. 56

made under the

City of Brisbane Act 2010
Local Government Act 2009

General Outline

Short title

Local Government Legislation (Boundary Changes and Other Matters) Amendment Regulation 2023

Authorising law

Section 252(2)(j) of the *City of Brisbane Act 2010*
Sections 20 and 270(2)(k) of the *Local Government Act 2009*

Policy objectives and the reasons for them

The policy objectives of the *Local Government Legislation (Boundary Changes and Other Matters) Amendment Regulation 2023* (the Regulation) are to:

- amend the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to prescribe new measures of financial sustainability (ratios) described in a new Financial Management (Sustainability) Guideline 2023, version 1
- amend the LGR to implement the recommendations of the Local Government Change Commission (the Commission) to alter the boundaries between the Barcaldine Regional Council and six of its adjoining councils.

New ratios

Section 160(5) of the CBR and section 169(5) of the LGR currently provide that the ‘relevant measures of financial sustainability’ are the following measures (or ratios) as described in the ‘Financial Management (Sustainability) Guideline’: (a) asset sustainability ratio; (b) net financial liabilities ratio; and (c) operating surplus ratio.

The Financial Management (Sustainability) Guideline is currently defined in section 160(9) of the CBR and section 169(9) of the LGR to mean the document called ‘Financial Management (Sustainability) Guideline 2013’, version 1, made by the department’.

The ratios are used to measure and assess the financial sustainability of local governments. They must be calculated and reported on in the following local government documents (‘the financial planning and accountability documents’):

- the budget, for the current year and the next nine years (section 160(4) of the CBR and section 169(4) of the LGR)
- the financial sustainability statements, for the current year and the next nine years (section 170 of the CBR and section 178 of the LGR)
- the community financial report, for the current year (section 171 of the CBR and section 179 of the LGR).

The Queensland Audit Office (QAO), as part of its yearly audit of local governments, certifies these calculations.

In recent years, the QAO has raised issues about the sufficiency of the ratios that local governments must use to analyse and report on. The QAO’s audit report ‘Forecasting long-term sustainability of local government (Report 2: 2016–17)’ recommended broadening the number of ratios required to be calculated to include the asset renewal funding ratio once local governments improved their asset condition data. Further, the QAO’s audit report ‘Local government 2020 (Report 17: 2020–21)’ recommended the development of new ratios for local governments that consider the different sizes, services and circumstances of the various local governments.

The Department of State Development, Infrastructure, Local Government and Planning (the department) has released a new Sustainability Framework for Queensland Local Governments¹ (the Framework), for implementation from 1 July 2023. The Framework notes that the State has responded to major reports on council governance and financial sustainability published by the QAO, Crime and Corruption Commission and other stakeholders through regulatory changes, capability, and other support programs, as well as undertaking structural reforms where necessary.

The Framework reflects the diverse nature of Queensland councils and considers key factors such as finances, asset management, compliance, governance and a council’s operating environment. It is an overarching document that will form the foundation for further policy and tailored support for the sector. It recognises the varied factors influencing council success over time, outlines an

¹ The Framework is available at https://www.statedevelopment.qld.gov.au/_data/assets/pdf_file/0033/77496/local-government-sustainability-framework.pdf.

integrated view of the drivers impacting council sustainability and illustrates how the department will attend to these issues in collaboration with councils, agencies and sector stakeholders. The Framework notes separate publication of a new guideline including new ratios, based on the principles established in the Framework. Accordingly, a new ‘Financial Management (Sustainability) Guideline 2023’, version 1 (the 2023 Guideline), has been made to describe the new ratios.

The 2023 Guideline increases the number of ratios from three to nine and states the extent to which the new ratios apply to a financial planning and accountability document according to the nature of each ratio and the different circumstances of Queensland’s local governments. For example, the unrestricted cash expense cover ratio and the asset renewal funding ratio do not apply to a local government’s long-term sustainability statement or budget forecast (the nine financial years following the financial year for which the budget is made). Also, the asset renewal funding ratio will apply to different tiers of local governments over a phased transition period, and the leverage ratio only applies according to a local government’s debt history or debt forecast.

Amendments to the CBR and the LGR are required to amend the definition of ‘Financial Management (Sustainability) Guideline’ to refer to the 2023 Guideline, and to clarify that a ratio applies to the extent the 2023 Guideline states the ratio applies to the council for the financial year.

The 2023 Guideline states the guideline first takes effect from the 2023–24 annual statutory financial reporting period (i.e., for local governments’ 2023–24 annual reports) and the 2024–25 financial year budget process (i.e., for local governments’ 2024–25 annual budgets). Therefore, transitional provisions are required to provide that the current three ratios as described in the Financial Management (Sustainability) Guideline 2013 apply to local governments’ 2021–22 and 2022–23 annual reports and 2023–24 annual budgets.

Implementation of Commission recommendations

Under the *Local Government Act 2009* (LGA), the Commission has jurisdiction to assess and make recommendations in relation to applications for local government changes. Local government changes are changes to a local government’s boundaries, divisions (other than the City of Brisbane), number of councillors, name or classification.

Chapter 2, part 3 of the LGA governs the process for making a local government change. Section 18 of the LGA provides that only the Minister for Local Government may propose a local government change to the Commission.

On 12 March 2021, the Deputy Premier and then Minister for State Development, Infrastructure, Local Government and Planning referred a local government change application received from the Barcaldine Regional Council to the Commission for assessment. The application sought changes related to the placement of 24 properties straddling the boundaries between the Barcaldine Regional Council and six adjoining local government areas—Blackall-Tambo Regional Council, Central Highlands Regional Council, Charters Towers Regional Council, Flinders Shire Council, Isaac Regional Council and Longreach Regional Council (the six adjoining local government areas). The proposed changes were to correct boundary anomalies identified by the former Department of Natural Resources, Mines and Energy where properties straddled two local

government areas, contrary to section 9(1)(d)(iii) of the LGR which states local government areas should generally have external boundaries that do not dissect properties.

On 15 September 2022, the Commission wrote to the Deputy Premier and then Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure enclosing its final determination report '*External Boundary Review – 2022 Final Determination – Barcaldine Regional Council, Blackall-Tambo Regional Council, Central Highlands Regional Council, Charters Towers Regional Council, Flinders Shire Council, Isaac Regional Council and Longreach Regional Council*' (the Commission report).

The Commission recommendations were for 26 minor boundary changes between the Barcaldine Regional Council and the six adjoining local government areas, outlined in the 'Achievement of policy objectives' section below.

The Commission report noted that, in addition to the 24 property lots included as part of the referral to the Commission, it had identified an additional two property lots in Isaac Regional Council that were consequently included in the review and Commission recommendations, on the basis that they were wholly surrounded by the other lots subject to review.

Section 20 of the LGA provides that the Governor in Council may implement the Commission's recommendation under a regulation and that the regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change.

Achievement of policy objectives

The Regulation commences on 1 July 2023 and achieves the policy objectives by amending the CBR and the LGR as follows.

New ratios

The Regulation amends the definition of 'Financial Management (Sustainability) Guideline' to mean the document called 'Financial Management (Sustainability) Guideline 2023', version 1, made by the chief executive and published on the department's website, and relocates the definition to Schedule 4 of the CBR and Schedule 8 of the LGR.

The Regulation replaces the previous dictionary entry for 'relevant measures of financial sustainability' in Schedule 4 of the CBR with a new dictionary entry for 'measures of financial sustainability', for the Brisbane City Council for a financial year. Similarly, an amended dictionary entry for 'measures of financial sustainability', for a local government for a financial year, is provided for in Schedule 8 of the LGR.

The Regulation replaces section 160(5) of the CBR and section 169(5) of the LGR with a new section 160(6) of the CBR and section 169(6) of the LGR to define the ‘measures of financial sustainability’ to be the following measures described in the financial management (sustainability) guideline:

- a) council controlled revenue ratio
- b) population growth ratio
- c) operating surplus ratio
- d) operating cash ratio
- e) unrestricted cash expense cover ratio
- f) asset sustainability ratio
- g) asset consumption ratio
- h) asset renewal funding ratio
- i) leverage ratio.

Amendments are made to sections 160, 170 and 171 of the CBR and sections 169, 178 and 179 of the LGR to clarify that, for the financial planning and accountability documents provided for in these sections, a ‘measure of financial sustainability’ applies to the extent the 2023 Guideline states the measure applies to a local government for a financial year.

As the Regulation commences on 1 July 2023, it inserts a new chapter 10, part 11 into the CBR and a new chapter 22 into the LGR to include transitional provisions providing that the current three ratios as described in the Financial Management (Sustainability) Guideline 2013 apply to local governments’ 2021–22 and 2022–23 annual reports and 2023–24 annual budgets.

Implementation of Commission recommendations

Section 6(1) of the LGR provides that the boundaries of each local government area, and any divisions of the area, are shown on its area map mentioned in schedule 1, column 3.

Section 13B of the LGR provides that schedule 3, part 1 implements the local government changes mentioned in it, and schedule 3, part 2 makes provision for facilitating the implementation of each local government change mentioned in schedule 3, part 1.

The Regulation amends schedule 1, column 3 of the LGR to update the area map titles for the Barcaldine Regional Council and the six adjoining local government areas to be:

- Barcaldine Regional Council—‘LGB 5 edition 2’
- Blackall-Tambo Regional Council—‘LGB 8 edition 2’
- Central Highlands Regional Council—‘LGB 25 edition 3’
- Charters Towers Regional Council—‘LGB 17 edition 2’
- Flinders Shire Council—‘LGB 27 edition 2’
- Isaac Regional Council—‘LGB 36 edition 4’
- Longreach Regional Council—‘LGB 41 edition 2’.

The Regulation also amends schedule 3, part 1 of the LGR to detail the local government change to implement the boundary changes recommended in the Commission report as follows, as well as to make available to the Barcaldine Regional Council and the six adjoining local government areas the implementation matters ancillary to boundary changes, listed in schedule 3, part 2 of the LGR.

Blackall-Tambo Regional Council

- The portion of Lot 1 RP617241 currently located within the Blackall-Tambo Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 10 crown plan MX814407 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Blackall-Tambo Regional Council.

Central Highlands Regional Council

- The portion of Lot 3 crown plan DM2 currently located within the Central Highlands Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 1 crown plan DM6 currently located within the Central Highlands Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 2 crown plan DM6 currently located within the Central Highlands Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 4 crown plan BE96 currently located within the Central Highlands Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 2 crown plan PT353 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Central Highlands Regional Council.

Charters Towers Regional Council

- The portion of Lot 3606 crown plan PH507 currently located within the Charters Towers Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 4479 crown plan PH1927 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Charters Towers Regional Council.

Flinders Shire Council

- The portion of Lot 38 SP291988 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Flinders Shire Council.

Isaac Regional Council

- The portion of Lot 3 crown plan DR26 currently located within the Isaac Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 3 crown plan BE57 currently located within the Isaac Regional Council is transferred so the entire property is in the Barcaldine Regional Council.

- The portion of Lot 4 crown plan BE57 currently located within the Isaac Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The entire Lot 5 crown plan BE57 currently located within the Isaac Regional Council is transferred so it is in the Barcaldine Regional Council.
- The portion of Lot 2 SP253479 currently located within the Isaac Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 1 crown plan BF51 currently located within the Isaac Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 681 crown plan PH406 currently located within the Isaac Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 3 crown plan DR20 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Isaac Regional Council.
- The portion of Lot 4 crown plan DR21 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Isaac Regional Council.
- The portion of Lot 5110 crown plan PH604 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Isaac Regional Council.
- The portion of Lot 7 crown plan BE164 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Isaac Regional Council.
- The portion of Lot 8 crown plan BE164 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Isaac Regional Council.
- The entire Lot 10 crown plan BE164 currently located within the Barcaldine Regional Council is transferred so it is in the Isaac Regional Council.
- The portion of Lot 2093 crown plan PH1883 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Isaac Regional Council.

Longreach Regional Council

- The portion of Lot 52 SP112852 currently located within the Longreach Regional Council is transferred so the entire property is in the Barcaldine Regional Council.
- The portion of Lot 9 crown plan RY118 currently located within the Barcaldine Regional Council is transferred so the entire property is in the Longreach Regional Council.

Consistency with policy objectives of authorising laws

The Regulation is consistent with the purposes of the *City of Brisbane Act 2010* and the LGA which include providing for the nature and extent of a local government's responsibilities and powers and a system of local government that is accountable, effective, efficient and sustainable (section 3).

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

New ratios

The benefits of the amendments are to support the new Framework that reflects the diverse nature of Queensland local governments, including a more tailored and fit-for-purpose approach to measuring local governments' financial and asset management.

Any costs to Government of implementing these amendments will be met through standard budgetary processes.

Implementation of Commission recommendations

The benefits of the amendments are to implement the recommendations of the Commission which take into account the principle that external boundaries should not dissect properties. The Commission also noted that uniting the lots in question would reduce the administrative burden on the landholders holding property interests within two local governments.

Any costs to Government of implementing these amendments will be met through standard budgetary processes.

Consistency with fundamental legislative principles

The Regulation is generally consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992* (LSA). Potential breaches of the fundamental legislative principles are addressed below.

The institution of Parliament

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (LSA section 4(2)(b)).

Sub-delegation of power

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation 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)).

The 2023 Guideline will be incorporated into legislation by reference, as a document made by the chief executive of the department. The sub-delegation of legislative power is mitigated by the inclusion of a version number and year on the 2023 Guideline and in the definition of Financial Management (Sustainability) Guideline in the Regulation, meaning that future changes e.g., to the ratios, will require amendments to the CBR and LGR. These amendments will be subject to the scrutiny of the Parliament.

Consultation

New ratios

Extensive stakeholder consultation was undertaken on the Framework and the 2023 Guideline. This included:

- releasing the ‘Local Government Sustainability Framework’ discussion paper on 7 October 2021 (open for public comment until 30 November 2021)
- departmental officers attending Regional Organisations of Councils (or similar) meetings and local government professional forums and conferences to discuss the proposals directly with local governments
- releasing a draft of the 2023 Guideline to councils in November 2022 and undertaking engagement activities with the local government sector following the release of the draft, including briefings to local governments as part of Finance Officer Network sessions in March and April 2023 or individual briefing to councils directly
- ongoing engagement with the Local Government Association of Queensland, the Local Government Finance Professionals, Local Government Managers Australia (Queensland), Queensland Treasury Corporation and the QAO.

The final 2023 Guideline was amended in response to feedback provided during this stakeholder consultation process. Stakeholders are supportive of the new ratios outlined in the 2023 Guideline, the CBR and the LGR.

Consultation was not undertaken with the Office of Best Practice Regulation as the department determined that the proposed amendments were excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation* exclusion category (c) ‘regulatory proposals for the internal management of the public sector or statutory authority’.

Implementation of Commission recommendations

The Commission undertook consultation with the landholders, councils and other stakeholders to confirm their position prior to the proposed boundary changes between the Barcardine Regional Council and the six adjoining local government areas.

The Commission report noted two instances where a local government or landholder did not support the Commission's recommended changes, as follows.

The Central Highlands Regional Council advised the Commission that it did not support the proposed changes regarding the five lots partially located within the Central Highlands Regional Council, on the basis that: there is no significant financial benefit to either local government area for the boundary change, the change is not practical, is administratively burdensome and provides little impact on either community or local government. However, the Commission determined that the proposed changes are in the public interest as the boundaries will no longer dissect properties and the changes will unite the lots in one council. Additionally, the proposed changes are for the smallest land portion to shift, creating a boundary that follows the locality border.

One landholder did not support movement of their lot (Lot 3 DR26) which is currently dissected by the boundary between the Barcaldine Regional Council and Isaac Regional Council, due to concerns about road access being removed if the property is relocated. However, the Commission report noted the Barcaldine Regional Council has provided assurance that this will not occur and the recommended change is in line with section 9(1)(d)(iii) of the LGR that states local government areas should generally have external boundaries that do not dissect properties.

The Commission gave public notice of the results of its external boundary review assessment in the Queensland Government Gazette and on the Electoral Commission of Queensland's website.

Consultation was not undertaken with the Office of Best Practice Regulation as the department determined that the proposed amendments were excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation* exclusion category (g) 'regulatory proposals that are of a machinery nature'.

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