

Planning (SEQ Regulatory Provisions) Amendment Regulation 2023

Explanatory notes for SL 2023 No.195

made under the

Planning Act 2016

General Outline

Short title

Planning (SEQ Regulatory Provisions) Amendment Regulation 2023

Authorising law

Section 284 of the *Planning Act 2016*

Policy objectives and the reasons for them

The objective of the *Planning (SEQ Regulatory Provisions) Amendment Regulation 2023* (Amendment Regulation) is to amend the South East Queensland (SEQ) Regulatory Provisions in Schedule 10, Part 15 and Part 16, associated definitions in Schedule 24, miscellaneous matters in Part 4, Division 6 to give effect to new or emerging policy positions in SEQ Regional Plan (ShapingSEQ) 2023 update.

The SEQ regulatory provisions aim to ensure that land use planning and development in the region align with the goals and strategies of ShapingSEQ. The provisions apply to different areas, including the Regional Landscape and Rural Production Area (RLRPA), Rural Living Area (RLA), and SEQ development areas. These provisions are used in the development assessment process and in the preparation or amendment of local government planning instruments such as planning schemes, ensuring alignment of levels of assessment.

SEQ development areas

ShapingSEQ 2023 has identified additional SEQ development areas for both future residential and employment land supply. Consistent with this strengthened policy, out of sequence development in the absence of State or local government land use and infrastructure planning being undertaken is considered unacceptable.

To protect additional areas from out of sequence development, making sure development aligns with the planning intent for the area, the Amendment Regulation introduces two categories of SEQ development areas. It includes updated assessment provisions and additional prohibitions for reconfiguring a lot and material change of use applications.

Category 1 SEQ development areas prohibit development until State or local government structure planning is undertaken.

Some types of low-intensity development, unlikely to compromise future land use and infrastructure planning are excluded from the prohibition. The development types excluded from the prohibition are material change of uses for a:

- dwelling house;
- dwelling unit;
- caretaker's accommodation;
- home-based business;
- rural activity, other than aquaculture, intensive animal industry, intensive horticulture or a permanent plantation, in a rural zone;
- coordinated project;
- state development area; and
- priority development area.

Development is also exempt from the prohibition to the extent it is:

- carried out under a development permit given for a development application properly made before 20 September 2023; and
- consistent with a development approval in effect for the premises on which the development is carried out, and given for an application that was properly made before 20 September 2023.

The date of 20 September 2023 was the closure date of public consultation on the draft ShapingSEQ 2023 Update Regulation Amendment consultation paper.

Category 2 SEQ development areas encompass assessable development, requiring applications to demonstrate alignment with the future planning intent for the area. Section 41 of the *Planning Regulation 2017* (Planning Regulation) outlines the criteria for referral agencies to consider when determining the consistency of development with future planning intent.

SEQ major enterprise and industrial areas

ShapingSEQ 2023 has strengthened outcomes sought for major enterprise and industrial areas and maps these areas. To support this, the Amendment Regulation introduces prohibitions for material change of use applications to certain accommodation activities that are located in an industry zone in an SEQ major enterprise and industrial area.

A material change of use for caretaker's accommodation is seen as compatible with the intent of SEQ major enterprise and industrial areas and is excluded from the prohibition.

Reconfiguring a lot

In line with the revised wording in ShapingSEQ 2023, rural subdivision precincts are no longer required. Consequently, their definition and specific exemption within the division are no longer necessary. The Amendment Regulation has moved the definition into Schedule 24 and the relevant exemption of a SEQ rural subdivision precinct has been absorbed into the exempt subdivision definition, with transitional provisions provided to support this change.

Tourist activity

The Amendment Regulation includes an exemption for a significant tourist activity area. This exemption streamlines the assessment process by removing the requirement for these areas to undergo assessment for activities consistent with the established tourist use on-site.

Indoor recreation

The Amendment Regulation includes a revised definition for ‘indoor recreation’ to ensure uses included within this definition more closely align with the respective impact each use has on the RLRPA and the policy objectives outlined in ShapingSEQ 2023.

The revised definition omits ‘a food and drink outlet’ and inserts ‘a function facility’.

Transport depots

The Amendment Regulation introduces specific thresholds for transport depots, ensuring a closer alignment with the impact of these uses in the RLRPA and the policy objectives outlined in ShapingSEQ 2023.

Combined uses

The Amendment Regulation includes additional provisions to assess combined urban activities and ensures the impact of these uses is more appropriately assessed.

SEQ northern inter-urban break

The SEQ northern inter-urban break is identified within ShapingSEQ 2023 as a regionally significant green break, providing open space amenity and non-urban landscape values between the major urban areas of the Metro and Northern sub-regions.

The Amendment Regulation will deliver on the election commitment to safeguard the SEQ northern inter-urban break. It introduces a set of provisions dedicated to the mapped area, acknowledging its significance and providing enhanced protection beyond the RLRPA provisions and thresholds. Applications that exceed the thresholds are to be subject to a test against the values of the SEQ northern inter-urban break as identified in ShapingSEQ 2023, locational and overriding needs assessments.

No new prohibitions are proposed as part of the Amendment Regulation and land in the SEQ northern inter-urban break is exempt from the RLRPA provisions, so a dual assessment against Part 16 is not required.

Achievement of policy objectives

Amendments to the SEQ Regulatory Provisions in Schedule 10, their associated definitions and miscellaneous matters will ensure that the policy intent behind the changes to ShapingSEQ 2023 is appropriately supported. Additional changes to the provisions also aim to reduce regulatory burden where necessary and allow for the more appropriate assessment of certain development applications, resulting from years of operational experience with existing provisions. The changes provide a refinement/enhancement of the existing provisions adopted within the Planning Regulation.

Consistency with policy objectives of authorising law

The Amendment Regulation prohibition for SEQ development areas will protect land from out of sequence development making sure that either; development aligns with the planning intent for the area, or that it is protected until detailed land use and infrastructure planning is completed. For SEQ major enterprise and industrial areas, the Amendment Regulation prohibition will ensure industrial zoned land is protected from incompatible accommodation activities.

Through these provisions, the Amendment Regulation is consistent with the purpose of the *Planning Act 2016* (Planning Act) to establish an efficient, effective, transparent, integrated, coordinated and accountable system of land use planning and development assessment to facilitate the achievement of ecological sustainability.

The Amendment Regulation is also consistent with the purpose of the Planning Act that states a planning regulation may be a categorising instrument.

The Amendment Regulation:

- gives statutory effect to ShapingSEQ 2023;
- delivers on the intent of ShapingSEQ 2023; and
- protects and gives effect to State interests articulated in the State Planning Policy 2017.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objectives, other than the Amendment Regulation. The Planning Act permits a regulation to set the category of assessment, to categorise development (including as prohibited development) and prescribe assessment benchmarks.

Benefits and costs of implementation

The cost of implementing the amended regulatory framework will be met within existing budget allocations, and the resources used to manage the existing regulatory framework will continue to be used to administer the amended framework.

Consistency with fundamental legislative principles

The amendments contained in the Amendment Regulation are consistent with fundamental legislative principles.

Consultation

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) made the ShapingSEQ 2023 Update Regulation Amendment consultation paper (along with the draft ShapingSEQ 2023 Update) available during the public consultation from 3 August to 20 September 2023.

Preparation of the Amendment Regulation has included consultation with state agencies and all 12 SEQ local governments. Following extensive consultation (pre- and post-public consultation) including working groups and individual meetings, all state agencies consulted as well as local governments support the proposed Amendment Regulation, noting the DSDILGP's continued work on updating the Amendment Regulation following feedback.

During public consultation of the draft ShapingSEQ 2023 Update, DSDILGP provided the public with the 'ShapingSEQ 2023 Update Regulation Amendment consultation paper' and conducted a series of consultation sessions in each local government area, online talk-to-a-planner sessions and created an online engagement platform to provide feedback. A total of 2519 submissions were received, including from each of the 12 SEQ local governments.

Of the submissions received, 28 public submissions included content about the Amendment Regulation. DSDILGP considered the submissions received and resolved the relevant submissions that requested changes to the Amendment Regulation to align with the policy intent of ShapingSEQ 2023.