

Planning and Other Legislation Amendment Regulation 2024

Explanatory notes for Subordinate Legislation 2024 No. 123

made under the

Economic Development Act 2012

Environmental Offsets Act 2014

Planning Act 2016

General Outline

Short title

Planning and Other Legislation Amendment Regulation 2024

Authorising law

Section 176 of the *Economic Development Act 2012* (ED Act)

Section 93 of the *Environmental Offsets Act 2014* (EO Act)

Section 284 of the *Planning Act 2016* (Planning Act)

Policy objectives and the reasons for them

The objectives of the *Planning and Other Legislation Amendment Regulation 2024* are to:

- give effect to updated Development Assessment Rules (DA Rules).
- give effect to updated Minister's Guidelines and Rules (MGR).
- allow for the conditioning of an affordable housing component.
- provide an administrative definition for build to rent.
- require the registering of temporary use licences to reflect those that are amended, cancelled, or suspended and also identify application requirements for amendments and extensions to temporary use licences.
- provide requirements for the material to be provided for an urban encroachment application following public consultation and the requirements for amended registration applications, where including additional land in the affected area.
- provide supporting processes and criteria for SFD (SFD), including:
 - the criteria for the declaration of an SFD
 - the materials to be made publicly available for inspection or purchase by the Chief Executive.

- the effect of particular notices (such as the proposed declaration notice) on assessment processes under the standard development approval pathway.
- removal of fees for change applications associated with the SFD pathway.
- amendments to the Environmental Offsets Regulation to allow for the conditioning of offsets for a development approval via the SFD pathway.

These amendments all give effect to the provisions established under the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Act 2024* (HAAPOLA Act). The purpose of the HAAPOLA Act is to optimise the planning framework's response to current housing challenges through a suite of new tools, and to improve the operational and process aspects of the Planning Act.

This delivers on key initiatives and commitments in the *Homes for Queenslanders* plan to deliver a package of reforms that simplify and expedite the supply of housing in the right locations.

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 22 July 2024.

Through a separate process under the Planning Act, the DA Rules have been amended to:

- include a new chapter containing assessment, public notification and decision-making processes for SFD.
- timeframes for assessing a development application for SFD.
- new public notification requirements for development applications for SFD, with new public notice diagrams which distinguish development applications for SFD from a standard development application, to ensure appropriate community awareness including submitters not having appeal rights.
- enable local governments to determine on how to publish public notices and removing the mandatory requirement for publication in a hard copy newspaper in relation to state planning instruments.
- include operational and editorial amendments to facilitate improvements within the development assessment framework.

Updating the currency date of the Minister's Guidelines and Rules (MGR)

The Amendment Regulation updates the currency date of the MGR within the Planning Regulation to July 2024.

Through a separate process under the Planning Act, the MGR have been amended to:

- change public notification requirements by removing the requirement that notices be published in a hard-copy newspaper in relation to a new or amended state planning instrument or local planning instrument.
- allow the Planning Minister to direct a local government to amend their local government planning scheme, without first giving notice to the local government

allowing a local government to amend their local planning scheme under the minor amendment process to reflect any direction from the Planning Minister.

- enable ministerial conditioning of a proposed Temporary local planning instrument (TLPI) or TLPI amendment.
- include operational and editorial amendments to facilitate improvements for local government plan-making, Local Government Infrastructure Plans, and Ministerial and local government infrastructure designations.

Affordable housing component and build to rent

The HAAPOLA Act (through a new section 65A) introduces the ability for the regulation to allow for a development condition to be imposed for the provision of affordable housing (otherwise known as an affordable housing component) on development approvals that propose an affordable housing component, or a SFD approval. The HAAPOLA Act also defines an affordable housing component to mean housing that is affordable to particular households, and that complies with the criteria for an affordable housing component.

The ability to condition development applications for the provision of an affordable housing component is a key tool in the delivery of affordable housing and these amendments respond to a long-standing gap in the planning framework, which limited assessment managers such as local governments and the State Government from securing the delivery of affordable housing.

The Amendment Regulation includes:

- provisions a condition for an affordable housing component must comply with, including conditioning the period the affordable housing component is to be maintained (i.e. for the life of the development or 15 years) and a detailed description of the component (i.e. stamped approved plans, lot plan etc). These provisions are the minimum requirements for a condition for affordable housing component, an assessment manager is able to include additional provisions (i.e. how the affordable housing component is maintained) in these conditions
- the minimum requirements for an application proposing the provision of an affordable housing component
- criteria for what constitutes an affordable housing component (for example, the housing is provided by a registered provider to an individual for residential use or housing that is appropriate to the needs of households with low to moderate incomes, if the members of households will spend no more than 30 per cent of gross income on housing costs).

These provisions provide the parameters for which a decision maker (including local governments) can impose conditions for an affordable housing component. For these conditions, the 'reasonable and relevant' test under the Planning Act (section 65(1) permitted development conditions) does not apply.

Transitional provisions identify where a local planning instrument included an administrative terms for 'affordable housing' prior to commencement of the Amendment Regulation, this definition will continue to apply until the local government either omits the definition from their local planning instrument or replaces the definition with the term 'affordable housing component'. This is to allow for the other provisions to be trialled under the SFD pathway, prior to its application to the applications that may be ordinarily made to, assessed and decided by a local government.

The Amendment Regulation also includes the provision of a 'build to rent' administrative definition in schedule 4 of the Planning Regulation.

Build to rent is intended to be for 'long-term' residential rental. It is intended any rental that exceeds three months (which is short-term) can meet this provision.

This will afford local governments the option to reflect this housing model in their local planning instruments as they see fit. This is another tool that can be utilised to facilitate increased delivering of housing in Queensland.

State facilitated development (SFD)

The HAAPOLA Act establishes the new SFD pathway to facilitate development that is a priority to the State, for example, affordable housing. The SFD pathway comprises of two stages, the declaration by the Planning Minister and assessment by the Chief Executive of the Planning Act. To support the operationalisation of the SFD pathway, the Amendment Regulation amends the Planning Regulation to prescribe the:

- criteria for the declaration of an SFD
- materials to be made publicly available for inspection or purchase by the Chief Executive
- effect of particular notices (such as the proposed declaration notice) on assessment processes under the standard development approval pathway.

Criteria for SFD

Section 106D of the HAAPOLA Act provides that the Planning Minister may only make a declaration if the application complies with the criteria in the Planning Regulation. The Amendment Regulation provides that the criteria for an application for SFD is:

- development must be for predominantly residential development
- development must include an affordable housing component to at least 15 per cent of all dwellings resulting from the development
- the affordable housing component must provide a diverse mix of dwelling types and diversity in the number of bedrooms contained in the dwellings
- the application is to be on premises within a zone supporting residential development, and not within an environmental zone or the limited development zone.

The terms 'zone supporting residential development', 'environmental zone' and 'limited development zone' are defined for this criteria. These definitions capture the scenario where a planning scheme may not be Planning Act aligned, to allow for substantially similar zones to also apply to these definitions.

'Zones supporting residential development' is to reflect zones where residential development could be facilitated. Consideration on any precincts or provisions in local planning instruments that may limit residential development in these areas is subject to considerations outside the criteria.

Effect of particular notices

The Amendment Regulation provides details on the effect of particular notices (such as the proposed declaration notice) on assessment processes under the standard development approval pathway.

Of note, the Amendment Regulation provides details on the effect on assessment processes for assessing and deciding an application, being suspended from the period:

- starting on the day the notice of proposed declaration is given.
- ending on:
 - the day the Planning Minister declares the relevant application an application for SFD
 - the day the Planning Minister gives notice under section 51E that the Planning Minister has decided not to declare an application for SFD, or
 - five days from the end of the 10 business days that the Planning Minister had, under section 106D, to either declare an application or give a notice under section 51E that the Planning Minister has decided not to declare an application for SFD.

Materials to be made publicly available

The Amendment Regulation also provides for documents that must be kept available for inspection and purchase, including:

- a notice of proposed declaration (only where the Planning Minister goes on to give a declaration notice)
- a declaration notice
- a decision notice
- reports on the number of declarations made and the nature of the decision.

Environmental offsets

Amendments to the Environmental Offsets Regulation 2014 have been included to allow for the conditioning of offsets for a development approval via the SFD pathway. The prescribed activities are not limited to matters of state environmental significance.

Fees

Where development is utilising the SFD pathway (Chief Executive as the decision maker), there are no associated application fees.

Section 39(a) of the Planning Regulation has been amended to make it clear in the scenario where the Chief Executive is the responsible entity for a change application (to change a development approval given or changed by the Chief Executive under part 6A), fees do not apply.

Urban encroachment

The Amendment Regulation includes provisions about the requirement for an application to amend a registration, where including additional land in the affected areas. In amending the registration to include additional land in an affected area, the Amendment Regulation includes new provisions which:

- prescribe requirements for application to amend registration to include additional land in an affected area (for example but not limited to, map showing the additional land

proposed to be included, details about any intensification of the development or additional land that is encroaching on the registered premises, details about the public consultation, details about any complaints)

- new ability for the Minister to seek additional information to decide the application within 30 days of receiving the application
- the matters that the Minister must consider in assessing an application to amend a registration to include additional land
- prescribe requirements for the content of notices about an amendment to include additional land (for example the name of the registered premises, description of affected area, effect of section 274 in the Planning Act).

The Amendment Regulation also prescribes additional requirements for application for registration or renewal. For an application to register a premises, the applicant will now be required to provide all the details of the public consultation carried out for the proposed registration including, a copy of the notice required under section 268(2)(a)(i) of the Act, the details about the period the public consultation was carried out and copies of any submissions received.

The Amendment Regulation also prescribes the requirements for public consultation (for example but not limited to, the name of the registered premises, the additional land to be included in the affected area, location of where the copies of the proposed application may be inspected or purchased, the effect of section 274 of the Planning Act).

The Amendment Regulation also creates an additional obligation on the Minister to consider the outcomes of public consultation, in considering an application to register a premises.

Temporary use licences

The Amendment Regulation includes provisions (in both the Planning Regulation and Economic Development Regulation) that require the registering of temporary use licences (TULs) to reflect those that are amended, cancelled, or suspended and also identify application requirements for amendments and extensions to temporary use licences.

The details required in the application for an extension to a TUL or amendment to a TUL include:

- applicant's name and contact details
- details of the licenced premises for the existing TUL
- the time period for the requested extension
- grounds for the requested extension.

Schedule 22 of the Amendment Regulation has also been amended to reflect these TUL applications must also be publicly available.

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 and facilitates the delivery of affordable housing components to address housing need.

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.

The Amendment Regulation provisions are to facilitate the amendments introduced by the HAAPOLA Act. There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

A SFD team has been established to process and assess SFD development applications.

Other amendments in the Amendment Regulation are not expected to incur additional costs or require additional resources.

Consistency with fundamental legislative principles

The Amendment Regulation provides for a transitional regulation-making power which applies to local planning instruments which use the term 'affordable housing'. In these circumstances, the reference to the term 'affordable housing' is taken to include the administrative term 'affordable housing component'. This transitional provision is included as it recognises that the implementation of a new definition in plan-making usually takes time to flow through to instruments and assessments.

The absence of this transitional provision would expose local governments to deciding applications which does accurately reflect contemporary requirements or going through expensive and lengthy processes to update their schemes to align with the new definition for an 'affordable housing component'.

Consultation

Public consultation on the DA Rules, MGR and the Planning Regulation amendments occurred from 19 April to 21 May 2024.

In response to submissions, amendments were made to the Planning Regulation as follows:

State facilitated development (SFD)

In response to submissions the SFD criteria was amended to exclude premises located in the limited development zone from being able to be declared a SFD. This reflects the intent of the zone, to limit development in these areas, due to the significant constraints (i.e. hazards, land contamination) which may be present on land zoned as a limited development zone.

Affordable Housing

Stakeholder feedback particularly from local governments and peak bodies sought for the existing definition for affordable housing to be retained and the criteria for an affordable housing component which was subject to public consultation, to only apply for SFD. In response to this, the criteria for an affordable housing component has been amended to include the existing definition for affordable housing. This will enable local governments to continue to use the existing definition but also have the ability of imposing a development condition for an affordable housing component.

Development Control Plans (DCP)

Stakeholder feedback was also received about the translation of the terms used in development control plans to terms used under the current Planning Act, if this translation was accurate. In response to this, the amendments relating to DCPs have been removed from the Amendment Regulation, to allow for additional time for the department to consult with key stakeholders about the translation of terms.

Regulatory Impact Analysis

The Office for Best Practice Regulation (OBPR) has been notified about the regulatory proposal. Between February and March 2024, preliminary advice was sought from the OBPR about the proposal. Majority of the proposal is considered to be minor or machinery, with some aspects (such as the SFD criteria and the approach for affordable housing) being identified as having some (but not significant) impacts which are detailed in the Summary Impact Analysis Statement.