

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

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Cameron Dick, Treasurer, Minister for Infrastructure and Planning provide this human rights certificate with respect to the Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020 made under the *Planning Act 2016* and *COVID-19 Emergency Response Act 2020*.

In my opinion, the *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The objective of the *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020* (Amendment Regulation) is to:

- Give effect to updated Minister's Guidelines and Rules (MGR) and Development Assessment Rules (DA Rules) by updating their currency date stated within the Planning Regulation 2017 (Planning Regulation).
- Introduce economic support provisions into the Planning Regulation to allow for streamlined approaches to easily enable low risk, economic value-adding uses to operate in envisaged, compatible zones across the State.
- The economic support provisions will:
 - remove the need for a planning approval for a change in tenancy within an existing building, if the business is expected in that zone and only minor building work will occur and the requirements of identified applicable assessment benchmarks are met.
 - set a maximum level of 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.
 - allow businesses to make minor expansions without planning approval
 - allow home-based business in the township zone residential zones that can support local economies as accepted development.

The economic support provisions will be in place for 1 year from the date of the regulation commencing. Local governments can 'opt in' by resolution, to one or more economic support provisions at any time within that year. After 'opting in' local governments can 'opt out' of one or all proposals at any time by resolution.

Amendments to the *Planning Legislation (COVID-19 Emergency Response) Regulation 2020* are proposed to remove temporary requirements for the public notification of development applications and change applications. This is necessary because updates to the DA Rules now make these temporary requirements permanent.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the Human Rights Act that are relevant to the amendment regulation are:

- recognition and equality before the law (section 15);
- right to freedom of expression (section 21); and
- right to health services (Section 37).

For the reasons outlined below, I am of the view that the Amendment Regulation is compatible with each of these human rights.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Recognition and equality before the law (section 15)

(a) the nature of the right

Section 15 of the *Human Rights Act 2019* provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

The Amendment Regulation removes the need for planning approval and reduces the level of development assessment for certain businesses in certain zones.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.

The Amendment Regulation limits the human right of recognition and equality before the law as regulatory barriers have been reduced for only a selection of land uses. Businesses that are not subject to the reduced regulation of the economic support provisions could argue that they are unfairly overregulated when compared to other land uses which are subject to the economic support provisions of the Amendment Regulation. The land uses that are subject to deregulation are arguably not the only ones within a local government area that could be deregulated.

The Amendment Regulation further limits the human right of recognition and equality before the law as local governments can “opt in” to the reduced regulation of the Amendment Regulation. If a local government chooses not to “opt in”, new businesses within that local government area could be subject to a higher level of development assessment than the same type of business in a local government that has chosen to ‘opt in’. This means that some businesses in some local government areas could start trading more quickly than in others even though their impacts on surrounding land uses are alike. For example if a land use was impact assessable and is now accepted development or code assessable, public notification is no longer

required. Public notification timeframes lengthen the period between lodging a development application and commencing business.

Small businesses, tourism, hospitality and retail sectors have been among the hardest hit by the COVID-19 pandemic. The economic support provisions of the amendment regulation are a timely response from the Queensland Government to assist local government and some of our hardest hit sectors on the road to economic recovery. The economic support provisions are not a panacea to potential overregulation throughout Queensland; however, they are a necessary step in the short term to create jobs and help to rebuild a stronger and more resilient Queensland economy.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Only a few low risk, economic value adding land uses are subject to reduced regulation under the Amendment Regulation. Reduced regulation for some new land uses will provide for employment, support employment or will be employment generators. The Amendment Regulation does not limit local governments' capacity to amend their planning schemes to reduce the level of development assessment for other land uses as they see fit.

Right to freedom of expression (section 21)

(a) the nature of the right

Section 21 of the *Human Rights Act 2019* provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The human right of freedom of expression is relevant to the Amendment Regulation as it reduces the level of development assessment for certain businesses seeking to establish in areas where that land use is expected. The reduced level of development assessment means that public consultation may no longer be required where it was formerly required for a change in tenancy. This will only apply in cases where the development was previously impact assessable and is now code assessable or accepted development.

The amendments are proposed to have effect for 1 year, with the possibility of local governments choosing to amend planning schemes to achieve similar outcomes. The temporary nature of the amendments and the ability for local government to 'opt in' reduces the limitation on the human right to freedom of expression.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the human right of freedom of expression is to facilitate the removal of unnecessary barriers for low risk land uses where that land use is anticipated in that zone. The State Planning Policy requires that planning schemes set the lowest appropriate level of development assessment to efficiently and effectively address the impacts of any development. If a land use is expected in a zone, involves the reuse of an existing building and does not have any adverse impacts on neighbouring sensitive land uses it should not require

public notification. Public notification adds time and complexity into the development assessment process and is overly burdensome on applicants for land uses that are envisaged and also compatible within an area (zone).

In addition, any proposed amendments to a planning scheme or parts of a planning scheme would already have undergone public notification and any person in the local government area may make a submission on any aspect of the proposals.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

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. 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.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are three categories of development set by the state government and applied by local governments through their planning schemes: prohibited development, accepted development and assessable development. There are two types of assessable development: code assessment and impact assessment. Code assessment enables expected development under the planning scheme to be achieved without requiring public notification. If the level of development assessment for a certain land use is amended under the Amendment Regulation to code assessable from impact assessable, public notification is no longer required. Requiring public notification for code assessable development is disproportionate to the potential impacts of the land use, contrary to the State Planning Policy and does not support the efficient determination of appropriate development.

The proposed economic support provisions of the Amendment Regulation are proposed to have effect for 1 year. It is optional for a local government to decide that one or more economic support provisions applies instead of the relevant provisions in its planning scheme. While there may be potential for the Amendment Regulation to impact temporarily on a person's right to freedom of expression as explained above (reduced level of development assessment) the power to do so is only available for a limited time.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The purpose of the limitation on the human right to freedom of expression is to easily enable low risk, economic value-adding uses to operate in certain zones, which has the added benefit of streamlining the planning framework. It is considered fair and reasonable that a land use anticipated in a zone should only be regulated to the extent necessary to address potential impacts. It is considered that the economic benefit to the community of the proposed changes outweighs the potential impact upon the human right.

Right to health services (Section 37)

(a) the nature of the right

Section 37 of the *Human Rights Act 2019* provides that every person has the right to access health services without discrimination.

Under the Amendment Regulation, a change in tenancy to a health care service in a Centre or Mixed-use zone does not require development approval if:

- the new tenancy involves the reuse of an existing building and only minor building work is required, and
- any impacts on neighbouring sensitive uses and residential uses can be effectively mitigated.

The Amendment Regulation reduces the regulatory barriers for a health care service to establish in Centre or Mixed-use zones which in turn could increase the availability and access to health services for Queenslanders, adding to the benefit of the public interest.

Conclusion

I consider that the Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it does not limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

HON. CAMERON DICK MP
TREASURER, MINISTER FOR INFRASTRUCTURE AND PLANNING

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