

Planning Amendment Regulation (No. 1) 2021

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, Steven Miles, Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning provide this human rights certificate with respect to the *Planning Amendment Regulation (No. 1) 2021* made under the *Planning Act 2016*.

In my opinion, the *Planning Amendment Regulation (No. 1) 2021*, 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

Economic support instruments

The *Planning Amendment Regulation (No. 1) 2021* (Amendment Regulation) updates the expiry date of the economic support instrument (ESI) provisions under the *Planning Regulation 2017* (Planning Regulation) to 17 September 2022. The amendment is therefore not new policy or provisions, but an extension of time to an existing policy that was previously assessed for compatibility with human rights.

The ESI will be in place for a further 12 months until 17 September 2022. A local government may opt in by resolution at any point during this period to one or more of the ESI provisions. A local government also may by resolution at any time 'opt out' of one or all provisions they had 'opted in' to.

The economic support provisions:

- make particular material changes of use for business purposes accepted development within an existing building, if the business is anticipated in that zone (because it aligns with the purpose of that zone) and only minor building work will occur, removing the need for a planning approval for a change in tenancy, provided that the requirements of identified applicable assessment benchmarks are met;
- reduce the level of assessment from impact assessment to code assessment for particular businesses seeking to establish where the use is expected in the relevant zone, 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 100m², whichever is lesser, provided that setback requirements are maintained, the building work is not undertaken on or adjacent/adjoining a state or local heritage building, and there is no operational works for vegetation clearing or reduction in parking or landscaping; and
- allow home-based business in township zone and residential zones as accepted development to support local economies, provided that no industry activity takes place and

the acoustic quality objectives under the *Environmental Protection (Noise) Policy 2019* are met.

Minor amendments

The Amendment Regulation makes minor amendments to the Planning Regulation to clarify provisions relating to the content of planning and development certificates and referral agency requirements for end of trip facilities.

The minor amendments:

- make it clear that the content of a standard and full planning and development certificate is to include a description of each/any new planning scheme that a local government has proposed to make but is not yet made; and
- clarifies the referral agency trigger for a development application for building work for an end of trip facility in Schedule 9, Part 3, Division 2, Table 10. A development application is intended to require referral where the development does not comply with an “acceptable outcome” (not the performance criteria).

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 2019* that are relevant to the Amendment Regulation are:

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

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 extends the expiry date of the ESI which removes the need for planning approval and reduces the level of development assessment for particular businesses in particular zones.

(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 Amendment Regulation which extends the expiry date of the economic support instrument provisions continues to limit the human right of recognition and equality before the law as

regulatory barriers have been reduced for a selection of land uses. Businesses that are not subject to the reduced regulation of the temporary economic support provisions could argue that the extension of the expiry date results in them being unfairly overregulated when compared to other land uses which are subject to the economic support provisions. 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 may 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 Amendment Regulation is 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 extension of the expiry of the economic support provisions is not a solution to potential overregulation throughout Queensland; however, it is 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

A limited number of low-risk, economic value-adding land uses are subject to reduced regulation under the Amendment Regulation, for example a shop in a centre zone will have a reduced level of assessment as it is a likely and anticipated use within this area. 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 extends the currency of the economic support instrument provisions which 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 amendment regulation affords local government who choose to amend their planning scheme more time 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 the relevant 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 ongoing state-wide economic recovery initiative by extending the timeframe of the currency period which streamlines the 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 economic support instrument 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 Amendment Regulation extends the expiry period of the temporary ESI by a further 12 months. 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.

Conclusion

I consider that the *Planning Amendment Regulation (No. 1) 2021* is compatible with the *Human Rights Act 2019* because it does 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.

STEVEN MILES MP

Deputy Premier and Minister for State Development,
Infrastructure, Local Government and Planning

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