

Planning (SEQ Regulatory Provisions) Amendment Regulation 2023

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* (HR Act), I, Meaghan Scanlon, Acting Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Planning (SEQ Regulatory Provisions) Amendment Regulation 2023* (Amendment Regulation) made under the *Planning Act 2016* (Planning Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Background

The *Planning Regulation 2017* (Planning Regulation) has been in effect since 2 June 2017. Regulatory provisions (known as the South East Queensland (SEQ) regulatory provisions) associated with the SEQ Regional Plan 2017 (ShapingSEQ) and contained within the Planning Regulation currently apply to the following areas in the region:

- Regional Landscape and Rural Production Area (RLRPA);
- Rural Living Area (RLA); and
- SEQ development areas.

The SEQ regulatory provisions play a crucial role in ensuring ShapingSEQ policy is delivered through the planning and development assessment process. Throughout the implementation of ShapingSEQ, various stakeholders, including government, industry, and the community have gained valuable knowledge and practical experience in the application of the SEQ regulatory provisions. Insights from planning, development assessment, and case law have highlighted the need for adjustments across the relevant schedules of the Planning Regulation.

The amended plan, ShapingSEQ 2023, responds to the region's projected growth to 2046, having regard to the opportunities and challenges for maintaining and enhancing the region's sustainability, global competitiveness, and high-quality living. ShapingSEQ 2023 also sets the long-term vision for the region which is supported by strategies and actions to deliver on the vision. Consequently, amendments are required to the SEQ regulatory provisions (Schedule 10, Parts 15 and 16 and associated definitions within Schedule 24, miscellaneous matters in Part 4, Division 6) to both address issues identified in the implementation of the provisions since 2017 and to give regulatory effect to updated and new policies in ShapingSEQ 2023.

Purpose

The Planning Act and the *Planning Regulation 2017* (Planning Regulation) authorise the making of regional plans that set out integrated planning and development policies about matters of State interest for particular regions of the State.

Section 43 of the Planning Act permits a regulation to prescribe development requirements, including identifying the category of development (including prohibited development), the category of assessment for assessable development, and the assessment benchmarks for assessable development.

The amendments will seek to ensure that the Planning Regulation remains effective and responsive to the evolving needs of the region, supporting orderly planning and development, sustainable growth, preserving natural assets, and fostering strong rural communities within SEQ.

The Amendment Regulation seeks to:

- provide additional protection from premature development to SEQ development areas (SEQ development areas), before detailed land use and infrastructure planning is undertaken;
- strengthen protection for SEQ major enterprise and industrial areas (SEQ MEIAs) from incompatible accommodation activities to ensure SEQ MEIAs remain available and viable for industrial uses. This will be supported by cadastral mapping for SEQ MEIAs;
- revise the assessment framework for large-scale food and drink outlets to ensure this activity is assessed if proposed in the RLRPA;
- reduce unnecessary referral triggers and/or over regulation of significant tourist activities, transport depots and function facilities in the RLRPA;
- ensure multiple urban activities in the RLRPA can be assessed together instead of individually to ensure a comprehensive assessment process; and
- introduce provisions to strengthen protection for the SEQ northern inter-urban break (SEQ NIUB). This will be supported by cadastral mapping for SEQ NIUB.

Human Rights Issues

1. Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- section 15 – recognition and equality before the law;
- section 16 – right to life;
- section 19 – freedom of movement;
- section 21 – freedom of expression;
- section 23 – taking part in public life;
- section 24 – property rights;
- section 25 – privacy and reputation;
- section 26 – protection of families and children;
- section 27 – cultural rights—generally;
- section 28 – cultural rights—Aboriginal peoples and Torres Strait Islander peoples;
- section 29 – right to liberty and security of person; and
- section 31 – right to a fair hearing.

2. Consideration of reasonable limitations on human rights (section 13 HR Act)

2.1. Human rights limited by decision

The decision will potentially limit (or interfere with) the identified human rights:

- section 15 – recognition and equality before the law;
- section 19 – freedom of movement;
- section 21 – freedom of expression;
- section 23 – taking part in public life;
- section 24 – property rights; and
- section 31 – right to a fair hearing.

Section 15 – recognition and equality before the law

(a) the nature of the right

Section 15 recognises the right to recognition and equality before the law contains several human rights related to non-discrimination and equality before the law.

ShapingSEQ 2023 will change the regional land use category (RLUC) or way that land is defined in some locations in the SEQ area. Relevant to the Amendment Regulation, this involves the selection or designation of areas, with changes affecting land within the SEQ area differently, e.g.

- new Urban Footprint areas to meet the need for more land for dwellings and industrial uses;
- the identification of SEQ development areas (including new cadastral boundaries) for more industrial land and dwelling supply;
- the identification of SEQ MEIAs (including new cadastral boundaries) for industrial and employment uses; and
- a new cadastral boundary for the SEQ NIUB.

The amendments to the Planning Regulation to support ShapingSEQ 2023 will apply regulatory provisions which may affect the use and development of land within SEQ development areas, SEQ MEIAs and the SEQ NIUB. Those regulatory provisions include prescribing certain types of development in those areas as prohibited development or assessable development.

(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

Not all acts of choice constitute discrimination under the HR Act. Discrimination under the HR Act means discrimination on the basis of an attribute identified in the *Anti-Discrimination Act 1991* (ADA) or an analogous ground of discrimination. Place of residence is not a protected attribute under the ADA or an analogous ground of discrimination for the purposes of the right to non-discrimination in sub-sections 15(2), (3) and (4). The right to equality before the law in section 15(3) requires consistent application of the law and will generally only be limited if a decision is devoid of objective justification.

ShapingSEQ 2023 is not devoid of objective justification in focusing on SEQ and some of the land within SEQ. The Planning Act and the Planning Regulation authorise the making of regional plans that set out integrated planning and development policies about matters of State interest for particular regions of the State.

Further, the development of the Amendment Regulation and ShapingSEQ 2023 has been informed by research, investigations, modelling and analysis, including:

- the Model for Urban Land Use and Transport Interaction (MULTI), which integrates economics, transport modelling, demographics and land use planning to test a range of growth scenarios across SEQ;
- requests for changes from local governments and through the public consultation process to the RLUCs for particular land parcels. These have been subject to detailed review and analysis (including applicable constraints and consideration via the MULTI for larger RLUC changes);
- a review of economic centres to strengthen protections in the regional plan;
- improving the relationship between high density residential development, jobs, other services and transport to provide for more ‘well located’ homes; and
- work with the NIUB Reference Group (including Sunshine Coast Council, Moreton Bay City Council and relevant state agencies) to further develop the values and objectives for the SEQ NIUB.

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

The limitations are necessary to achieve the purposes of the Amendment Regulation, as described above.

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

There are no less restrictive ways to achieve the purposes of the Amendment Regulation, as described above.

(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

I am satisfied the proposed Amendment Regulation strikes a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on this right that may result from the introduction of the Amendment Regulation.

(f) any other relevant factors

There are no other factors considered relevant.

Section 19 – freedom of movement

(a) the nature of the right

Section 19 recognises that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

The Amendment Regulation will support ShapingSEQ 2023 through the inclusion of prohibitions for certain types of development in SEQ development areas and the SEQ NIUB, but these prohibitions do not restrict the use of land in these areas for a private residence. The provisions for SEQ MEIAs, however, do include the prohibition of an accommodation activity (such as a private residence) in a SEQ MEIA where within an industry zone, with the exception of caretaker’s accommodation and for development rights exercised before the closure of the public consultation on the draft ShapingSEQ 2023 Update on 20 September 2023.

Limiting the entitlement of property owners to use their land for a private residence limits the freedom of movement.

(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 in this case is to protect SEQ MEIAs from incompatible land uses, such as residential development. The supply of industrial land in SEQ is limited and its preservation is therefore important.

Prohibiting accommodation activities (with very minor exceptions) will help ensure that existing industrial areas are not incrementally subsumed by residential development or that the continued and future use of existing industrial areas is not adversely impacted by incompatible residential accommodation uses.

The nature of the purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

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

Given the economic importance of maintaining SEQ's existing industries and the scarce availability of suitable land, the limitations are necessary to achieve the purposes of the Amendment Regulation, as described above.

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

While it might be possible to achieve a similar result through local governments assessing applications for accommodation activities on a case-by-case basis, a general prohibition avoids any incremental loss of industrial land through inconsistent decision-making by assessment managers on a case by case basis, and reduces the impact felt by the exhaustion of industrial land supply in local government areas across the region, while still allowing for specific accommodation activities (i.e. caretaker's residence) where consistent with the purpose of the industry zone in a SEQ MEIA.

(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

I am satisfied the proposed Amendment Regulation strikes a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to freedom of movement that may result from the introduction of the Amendment Regulation. Accordingly, I consider that limitations on this right from the introduction of the prohibitions on certain types of development in the Amendment Regulation is reasonable and demonstrably justifiable.

(f) any other relevant factors

There are no other factors considered relevant.

Section 21 – freedom of expression

(a) the nature of the right

Section 21 of the HR Act recognises that every person has the right to hold and express an opinion, through speech, art, and writing (or other forms of expression) and to seek out and receive the expression of others' opinion. This includes making decisions in relation to the provision of information or restrictions on access to information.

(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 supports the objectives of ShapingSEQ 2023 by prohibiting certain types of development in the certain SEQ development areas, and SEQ MEIAs that is not consistent with the future planning intent of the area or in the case of the SEQ NUIB, would permit activities in a rural zone that are not rural activities.

This outcome may limit the right to freedom of expression because development applications cannot be made for prohibited development and a person cannot appeal the decision to the Planning and Environment Court on appeal.

However, the right will be limited for the purpose of protecting land in these SEQ development areas from pre-emptive development applications, and SEQ MEIAs and the SEQ NIUB from incompatible development, ensuring that open space and rural land does not become subject to urban development without careful and orderly planning.

The nature of the purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

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

The limitations are necessary to achieve the purposes of the Amendment Regulation. The restraint will help protect important landscape, character and cultural heritage values in the SEQ NUIB and protect existing industrial land uses in SEQ MEIAs. The prohibition will achieve that and, although it is a significant constraint, no feasible alternatives have been identified.

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

There are no less restrictive ways to achieve the purposes of the Amendment Regulation, as identified above.

Local governments cannot prohibit development under their planning schemes because the Planning Regulation does not currently include a provision allowing them to do so, nor can Ministerial directions or Ministerial temporary local planning instruments.

(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

I am satisfied the proposed Amendment Regulation strikes a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to freedom of expression that may result from the introduction of the Amendment Regulation.

(f) any other relevant factors

There are no other factors considered relevant.

Section 23 – taking part in public life

(a) The nature of the right

Section 23 provides that every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.

The draft ShapingSEQ 2023 was released for public consultation and a consultation paper about the proposed Amendment Regulation was made available during the consultation period, although the details of the amendments to the Planning Regulation were not fully articulated in the consultation paper.

(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

While the intent for prohibitions for SEQ development areas was outlined at a higher level in the proposed amendment consultation paper (i.e. prohibition on variation requests for SEQ development areas), the community has to a lesser extent had the ability to provide feedback about the specific provisions now proposed for the new SEQ development areas where prohibitions are proposed within the Amendment Regulation.

The proposed amendment consultation paper was to inform the public about the manner in which ShapingSEQ 2023 would be implemented, rather than to seek public comment about the terms of the Amendment regulation.

The nature of the purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

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

The prohibitions for SEQ development areas are necessary to achieve the purposes of the Amendment Regulation as described above. New SEQ development areas in ShapingSEQ 2023 were previously located in the RLRPA and would have been already subject to prohibitions (i.e. reconfiguration of a lot and specified material change of uses). While the scope of prohibitions has been broadened post-consultation in the Amendment Regulation for SEQ development areas this is to ensure the prohibition matches the categories of SEQ development areas with the risk of out of sequence development at each location and were developed in consultation with feedback from state agencies and local governments.

The Amendment Regulation prohibits development within a Category 1 SEQ development areas until the completion of detailed State or local government land use and infrastructure planning. Some types of low-intensity development, unlikely to impact future land use and infrastructure planning, are excluded from this prohibition. Exclusions have also been provided to recognise development rights exercised before the closure of the public consultation on the draft ShapingSEQ 2023 Update (20 September 2023) under existing development approvals or existing development permits. Furthermore, the community will have the opportunity to comment on future planning schemes or amendments that are required to unlock these areas when the prohibition is removed.

Category 2 SEQ development areas encompass assessable development under the Amendment Regulation, requiring applications to demonstrate alignment with the future planning intent for the area and provides criteria for referral agency assessment. The category of assessment for land in a Category 2 SEQ development area remains the same as the existing provisions.

ShapingSEQ 2023 identifies that SEQ MEIAs are to be safeguarded so there is no loss of industrial land, while recognising the unique role each MEIA across the region fulfils. It guides compatible development around industrial areas so as not to jeopardise the future development and operation of critical industrial land uses within SEQ MEIAs.

To support this, the Amendment Regulation introduces prohibitions for material change of use applications for accommodation activities (excluding caretaker's accommodation) that are located in an industry zone in an SEQ MEIA. Similar to SEQ development areas, exclusions have also been provided to recognise development rights exercised before the closure of the public consultation on the draft ShapingSEQ 2023 Update (20 September 2023).

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

There are no less restrictive ways to achieve the purposes of the Amendment Regulation, as described above.

(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

I am satisfied the proposed Amendment Regulation strikes a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to take part in public life that may result from the introduction of the Amendment Regulation.

(f) any other relevant factors

There are no other factors considered relevant.

Section 24 – property rights

(a) The nature of the right

Section 24 of the HR Act provides that every person has the right to own property alone or in association with others and the right to not be arbitrarily deprived of property.

ShapingSEQ 2023 promotes property rights through:

- allowing a broader range of development on land which is now included in the Urban Footprint;
- supporting the use of land for more dwellings and different typologies of dwellings through dwelling targets and dwelling diversity sub-targets, a focus on gentle density, a combined social and affordable housing target, and a focus on increased residential density in well-located, high amenity areas;
- identifying priority future growth areas where land may be used for a future urban use; and
- supporting the protection of land for industrial uses, preventing incompatible development from undermining the long-term use of industrial land.

A number of policies and supporting provisions in the Planning Regulation have not been amended and will be carried forward to apply for ShapingSEQ 2023.

Since 2005, the Planning Regulation had imposed limitations on property rights. In particular, currently under the Planning Regulation there are provisions which prohibit reconfiguring a lot (RAL) for subdivision of lots unless each lot created is at least 100ha (as an example) and prohibit a material change of use (MCU) for residential development in the RLRPA (subject to a range of exemptions outlined within the Planning Regulation).

Though not all lands within the Urban Footprint will be suitable for urban development, development processes will inform the quantum and extent of urban development based on site specific constraints. The abovementioned prohibition will continue to apply to subdivision and residential development in the RLRPA to ensure the values of the land (social, cultural, economic, and environmental) are protected from encroachment by urban and rural residential development.

The Amendment Regulation promotes property rights in the RLRPA by increasing thresholds (reducing regulatory burden) at which development requires a referable development application to referral agencies when involving a Significant Tourist Activity Area, transport depot or function facility in certain circumstances. These changes ensure closer alignment of the impacts of these uses with the scale of development expected in the RLRPA and to ensure the continued protection of the values of the land.

ShapingSEQ 2023 changes the land use category for some land from RLRPA to Urban Footprint. These expansions to the Urban Footprint have been informed by updated population projections, and a detailed analysis of the need for additional housing and land within the Urban Footprint to meet the requirements up to 2046. An assessment of the suitability of land for inclusion in the Urban Footprint was also carried out, including consideration of constraints, serviceability, and proximity to existing urban areas and jobs.

The Amendment Regulation may limit property rights by clarifying that large-scale food and drink outlets in the RLRPA are subject to development assessment and are not ‘as of right’ uses, and lowering the threshold at which development requires a development permit for certain uses in the SEQ NIUB (compared to the existing regulatory provisions applied for the RLRPA where the SEQ NIUB is located). The category of development and category of assessment remain the same as the existing provisions.

The Amendment Regulation limits property rights through the prohibitions to:

- provide additional protection for SEQ development areas from pre-emptive development, as outlined above;
- protect SEQ MEIAs from incompatible development, as outlined above; and
- protect the SEQ NIUB from incompatible land uses, such as residential subdivisions or shopping centres, as outlined above.

(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

Prohibited development is development for which a development application may not be made (section 44(2) of the Planning Act). Further, it is a development offence to carry out prohibited development (except in limited circumstances) (section 162 of the Planning Act).

Removing the entitlement of property owners to develop their property amounts to a deprivation of property. However, for the right in section 24(2) of the HR Act to be limited, the deprivation must be arbitrary. In this context, arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of being disproportionate to a legitimate aim sought. It is considered that the limitations from the application of the prohibitions for certain development in SEQ development areas, SEQMEIAs and the SEQNIUB are not arbitrary for the following reasons:

- the prohibitions in SEQ development areas aim to ensure that pre-emptive development does not occur in these areas where such development may compromise the future detailed land use and infrastructure planning for the areas and will help achieve orderly development in these areas;
- the protection of the SEQ NIUB through the imposition of prohibitions on certain development will assist in ensuring the efficient use of land and the protection of these areas from development, and will limit the need for the further provision of infrastructure in these areas;

- the protection of SEQ MEIAs will ensure that well planned industrial areas are implemented in an appropriate way and in appropriate locations, and that those locations are protected from incompatible land uses.
- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

I am satisfied that the limitations from the application of the prohibitions for certain development in the RLRPA, SEQ development areas, SEQ MEIAs and SEQ NIUB are not arbitrary for the following reasons:

General

Public consultation on ShapingSEQ 2023 Update and proposed Planning Regulation amendments occurred during the statutory public notification period as outlined above. During this time, any member of the public could make a submission for the Planning Minister's consideration.

RLRPA

The existing prohibitions in the RLRPA do not prevent a single-family dwelling on land and therefore do not restrict the right to live on properties.

The prohibitions in the RLRPA are necessary to protect the values of this land from encroachment by urban and rural residential development, protect natural assets and regional landscapes and support the development and economic growth of rural communities and industries

The prohibitions in the RLRPA are necessary to promote a compact settlement pattern and consolidation of urban development within established communities.

SEQ development areas

The prohibitions in SEQ development areas do not prevent a single-family dwelling on land and therefore do not restrict the right to live on properties.

The prohibitions aim to ensure that pre-emptive development does not occur where this may compromise the future detailed land use and infrastructure planning for the area.

The prohibitions will help to achieve orderly development in these growth areas.

SEQ MEIAs

ShapingSEQ 2023 identifies SEQ MEIAs as supporting employment throughout the region. The ShapingSEQ 2023 (and supporting South East Queensland Infrastructure Supplement (SEQIS)) also identify key region shaping infrastructure to support, among other things, SEQ MEIAs.

In seeking to ensure a prosperous region under the 'Prosper' theme of the ShapingSEQ 2023, it is important to ensure well planned industrial areas are implemented in an appropriate way, and in appropriate locations. To ensure this, land designated as having a high level of economic importance requires protection from incompatible land uses.

The proposed prohibitions in SEQ MEIAs in the Amendment Regulation do not prevent employment uses on the lands and are necessary to avoid loss of regionally important employment lands.

SEQ NIUB

The original 2005 SEQ Regional Plan, among other things, responded to the uncontrolled growth of the local government areas included in the plan, including the desire to avoid the ‘200km city’ which was the potential connection of Brisbane, Gold Coast, and Sunshine Coast through continued expansion of urban areas north and west along the major highway.

The SEQ NIUB has been identified in the previous iterations of SEQ’s regional plans, and requires refinement based on an assessment of its values.

In addition to controlling, protecting and preserving regionally significant flora, fauna, open space, amenity values and landscapes, the protection of the SEQ NIUB would assist in ensuring efficient use of land, and limiting the need for further provision of costly infrastructure which supports the Grow and Live themes of ShapingSEQ 2023.

Since 2017, the area has continued to experience development pressures, which led to an election commitment to ‘work with the Sunshine Coast Council and Moreton Bay Regional Council to determine the extent of the SEQ NIUB boundary and ensure its protection for the longer term’.

The prohibitions in the SEQ NIUB do not prevent a single-family dwelling on land and therefore do not restrict the right to live on properties.

The limitations are necessary to achieve the purposes of the Amendment Regulation, as described above.

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

There are no less restrictive ways to achieve the purposes of the Amendment Regulation. The proposed prohibitions are the only way to adequately protect the relevant land under the performance-based planning framework under the Planning Act.

(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 Amendment Regulation delivers a balanced approach to the imposition of the limitations on property rights, noting:

- the limitations do not extend beyond the scope of what is necessary to achieve the purpose. In particular, the prohibition for: RAL is limited to subdivision of lots less than 100 ha, and MCU for residential development in the RLRPA;
- further, the existing prohibitions applicable to land in the RLRPA do not restrict a landowner’s ability to own or dispose of land or live on the land;
- the limitations only apply to certain development types in SEQ development areas, SEQ MEIAs and the SEQ NIUB;
- the limitations are consistent with the Planning Act which permits a regulation to categorise development (including as prohibited development); and
- the limitations do not restrict all development on the land, prohibiting development only to the extent necessary to achieve the planning intent.

I am satisfied the proposed Amendment Regulation strikes a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to freedom of expression that may result from the introduction of the Amendment Regulation.

(f) any other relevant factors

There are no other factors considered relevant.

Section 31 – right to a fair hearing

(a) The nature of the right

Section 31 recognises that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The right to a fair hearing may be limited by the Amendment Regulation for the RLRPA, SEQ development areas, SEQ MEIAs and the SEQ NIUB in that the prohibitions do not allow a development application to be made which would have had associated appeal rights for the applicant. Amendments to the category of assessment are also relevant as the changes from impact to code assessment removes third part appeal rights. This means a person cannot appeal the decision to the Planning and Environment Court.

(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

A regional plan's purpose is to set out integrated planning and development assessment policies about matters of State interest for regions of the State. The Amendment Regulation (and supported by ShapingSEQ 2023) will further the State Planning Policy 2017 state interests as they relate to SEQ. Allowing appeal rights for individual property owners could lead to a multitude of individualised challenges, potentially hindering the efficient and effective implementation of the regional plan. Instead, the regional planning process includes a statutory consultation stage which allows interested persons, including property owners, to make requests and provide input on the regional plan.

As such, the limitation of this human right facilitates comprehensive high level planning decisions and the delivery of state interests at a regional level and is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

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

The limitations are necessary to achieve the purposes of the Amendment Regulation, as described above.

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

There are no less restrictive ways to achieve the purposes of the Amendment, as described above.

(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

I am satisfied that the proposed Amendment Regulation strikes a fair balance between the benefits gained by the public by the prescribed planning requirements, and the limitation on the right to freedom of expression that may result from the introduction of the Amendment Regulation.

(f) any other relevant factors

There are no other factors considered relevant.

2.2 Other rights: *Environmental impacts*

The rights identified below have been identified as relevant from an environmental and climate change perspective:

- section 15 – recognition and equality before the law;
- section 16 – right to life;
- section 19 – freedom of movement;
- section 24 – property rights;
- section 25 – privacy and reputation;
- section 26 – protection of families and children;
- section 27 – cultural rights – generally;
- section 28 – cultural rights – Aboriginal peoples and Torres Strait Islander peoples; and
- section 29 – right to liberty and security of person.

It is important to acknowledge that the effect of the proposed decisions on human rights, and the contribution to climate change, will be neither direct nor immediate. The decisions will put in place a planning and development framework. They will not authorise land clearing or construction and, when those activities occur, they will be the subject of other decisions and approvals that will, in most cases, require their own human rights compatibility assessments. However, because the proposed decisions will establish the framework to facilitate these subsequent decisions, the rights are engaged even if any resulting limitation is indirect and difficult to quantify.

The Amendment Regulation (which will both support ShapingSEQ 2023 relating to SEQ development areas, SEQ MEIAs and the SEQ NIUB and include regulatory provisions relating to those areas) contemplates land uses that may adversely affect the environment and contribute to climate change, whether directly or indirectly, for example, vegetation clearing and approval of industrial activities that affects air quality. Therefore, the Amendment Regulation limits, or has the potential to limit, any or all of the rights recognised in sections 15, 16, 19 and 24 to 29 of the HR Act.

The potential limitation of the right to recognition and equality before the law (section 15) arises because climate change disproportionately affects the rights of children, whose futures are threatened, the medically vulnerable who are at risk of temperature fluctuations and pollution and Aboriginal and Torres Strait Islander peoples whose traditional lands and waters are threatened. Age, impairment and racial or ethnic origin are protected attributes under the ADA and therefore the climate change risks engage the right to equal protection of the law without discrimination.

The risks to children identified above also engage and limit the rights of children recognised in section 26 of the HR Act, while the risks to the cultural rights of Aboriginal peoples and Torres Strait islanders also separately engage and limit the rights recognised in section 28 of the HR Act.

Climate change represents an existential threat to humanity and therefore decisions that potentially contribute to it engage and potentially limit the right to life and the right to liberty and security.

Geographic and environmental changes resulting from climate change may affect the ability of people to move within Queensland or to choose to live in particular parts of Queensland. They may also result in people being deprived of property for example, coastal land may be lost to rising sea levels and may also result in individuals and established communities having to relocate. The right to freedom of movement and choice of where to live (section 19), property rights (section 24), the right to maintain one's home (section 25), cultural rights generally (section 27) and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are therefore engaged and potentially limited.

These are extremely significant rights and any limitation of them is a serious matter. However, I am satisfied that the limitation is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act, for the following reasons.

Planning is becoming increasingly essential to how we deal with some of the issues and opportunities facing Queensland and Australia, including:

- accommodating a rapidly growing population;
- increasing housing choice and affordability;
- creating liveable cities in which people and communities can thrive;
- creating places that support economic growth, productivity and innovation;
- making sure we have the right infrastructure in place to support communities, the economy and jobs growth;
- making the best possible use of public investment in infrastructure;
- ensuring our communities become more resilient to natural hazards;
- supporting more environmentally sustainable ways of living; and
- protecting the natural environment, green space and natural resources.

The Amendment Regulation (supported by ShapingSEQ 2023 and the SEQIS) will create a framework for orderly planning and development to meet these challenges at the regional level.

The proposed instruments are informed by extensive research, investigations, modelling and analysis to ensure controlled development that is environmentally sustainable while still enabling individuals to have access to accommodation, work and other opportunities. The Amendment Regulation (supported by ShapingSEQ 2023) is intended to maintain the existing assessment benchmarks for development in SEQ, relating to environmental hazards or consideration of environmental impacts, for example bushfire and flooding.

By establishing a framework that controls and regulates development, the Amendment Regulation (supported by ShapingSEQ 2023) ensures that the environmental risks and consequent human rights limitations are controlled, regulated and minimised.

The right to life (section 16), the right not to be deprived of property (section 24(2) and the right to privacy (section 25(a)) are all subject to an internal limitation, namely that the limitation on the right should not be 'arbitrary'. 'Arbitrary' in this context should be understood as having the same meaning it have in international human rights discourse, namely capricious, unjust or unreasonable. The research undertaken to inform the Amendment Regulation (supported by ShapingSEQ 2023 and SEQIS) and the focus on ensuring that the environmental damage caused by development in the region is minimised support the conclusion that any limitation on the rights in sections 16, 24(2) and 25(a) is not arbitrary.

Section 25(a) includes a second internal limitation, namely that interference with privacy, family, home or correspondence must not be unlawful. The planning changes contemplated in the Amendment Regulation are supported by ShapingSEQ 2023 and therefore no question of unlawfulness arises.

Urban development cannot occur without environmental changes that have the potential to contribute to climate change. However, urban development is essential to ensure that residents of SEQ have access to housing and critical infrastructure. As stated above, the proposed decisions will not themselves authorise urban development, meaning that their contribution to climate change will be indirect and there will be other opportunities to mitigate environmental harm when making actual development decisions under the broader planning framework. I am satisfied that extent of the limitations placed on these rights by the proposed decisions are reasonable and demonstrably justifiable.

Conclusion

I consider that the *Planning (SEQ Regulatory Provisions) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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