

Planning and Other Legislation Amendment Regulation 2024

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, the Honourable Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works provide this human rights certificate with respect to the *Planning and Other Legislation Amendment Regulation 2024* (Amendment Regulation) made under the *Economic Development Act 2012*, *Environmental Offsets Act 2014* and *Planning Act 2016* (the 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

On 16 April 2024, the Queensland Parliament passed the *Housing Availability and Affordability (Planning and Other Legislation Amendment) Act 2024* (HAAPOLA Act) which aims:

- to improve the planning framework's response to the housing challenges, and
- make operational and process improvements to ensure that the planning framework is as efficient as possible.

To support the HAAPOLA Act's objective in ensuring that the framework is as efficient, effective and responsible as possible, consequential changes are necessary to the Planning Regulation 2017 (Planning Regulation), Environmental Offsets Regulation 2014 (EO Regulation) and the Economic Development Regulation 2023 (ED Regulation). Consequential amendments are also required to the Development Assessment Rules and the Minister's Guidelines and Rules.

The Amendment Regulation seeks to:

- allow for a development condition to be imposed for the provision of an affordable housing component,
- provide for the 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),
- provide for the supporting processes and criteria for State facilitated development (SFD), including the materials that need to be made by publicly available by the Chief Executive for inspection and purchase,

- require for temporary use licences to be registered to reflect those licences which have been amended, cancelled or suspended, and also identify application requirements for amendments and extensions to temporary use licences,
- provide for what material should be supplied for an urban encroachment application following public consultation, public consultation requirements and the requirements for applications to amend a registration, including in circumstances in which additional land is being included in the affected areas,
- provide for a new administrative definition for ‘build to rent’ development, and
- provide for transitional provisions to support local governments in transitioning from the use of the term ‘affordable housing’ to the new definition ‘affordable housing component’.

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 HR Act that are relevant to the Amendment Regulation are:

- section 21 – freedom of expression
- section 24 – property rights

The clauses of the Amendment Regulation that are relevant to these rights are:

- Clause 14 – Insertion of new ss 43A – 43C,
- Clause 16 – Insertion of new pt 5A.

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

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 the receive the expression of others’ opinions. This includes making decisions in relation to the provision of information or restrictions on access to information.

Clause 16 of the Amendment Regulation amends the Planning Regulation to insert new section 51D which provides for the effect of a notice of proposed declaration for assessing and deciding application. Under this section if the Minister gives a notice of proposed declaration, the period for assessing and deciding an application is suspended until the day the Minister declares an application, the Minister gives notice that the Minister has decided not to declare an application, or 15 days after the representation period. This effect means that persons that may have ordinarily had the ability to make a submission on the application may not have the ability to do, if the application is declared.

While the Amendment Regulation may interact with the freedom of expression, it does not limit the human right.

(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 this amendment is to clarify the effect of the proposed declaration notice, to ensure that the process for assessing and deciding an application does not continue while an application is being considered to be declared and subsequently, assessed under the SFD pathway. While persons that may have ordinarily had the ability to make a submission on the application may not have the ability to do, if the application is declared, the SFD pathway provides for processes to allow for submissions and representations to be made on the application. For example, during the declaration process, particular persons may have the ability to make a representation about the proposed declaration of an application. Alternatively, during the assessment process, the application may still be subject to public notification, therefore, allowing for those persons to make submission at a later date. This also removes any inconsistency in decision-making about the application by ensuring that either, the Chief Executive or the original decision-maker makes the decision about the application.

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 limitation is necessary to ensure that the processes for assessing and deciding an application are temporarily suspended until such time that the Minister decides to declare or not declare an application. If the Minister decides to declare the application, the Chief Executive may either restart the application at the restarting point prescribed by the Minister or assess the application from the point, that the application was suspended, as a result of the proposed declaration notice.

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

Suspending the process for assessing and deciding an application is the only way to ensure that the assessment and decision of an application is paused while the Minister decides if it is appropriate to declare the application and for the Chief Executive to assess the application, instead of the original decision-maker. This effect is consistent with existing mechanisms within the planning framework such as the proposed call in notice for Ministerial Call ins.

(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

In my opinion, the proposed amendments strike a fair balance between the benefits gained by the public through an expedited delivery of State identified priorities, with limited inconsistencies in decision-making, and the limitation on the right to freedom of expression.

(f) any other relevant factors

Nil.

In my opinion, the Amendment Regulation is compatible with the right to freedom of expression because the limitation on the right is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Section 24 – Property Rights

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of a person's property.

Affordable Housing Component

Clause 14 of the Amendment Regulation amends the Planning Regulation to insert new section 43A to 43C to create the ability for a development condition to be imposed if the condition states the period for which the component must be maintained as an affordable housing component and includes a detailed description of the affordable housing component (for example, the number of dwellings to be provided, the premises to which the condition relates). In addition to these requirements, the Amendment Regulation also prescribes requirements for applications that propose an affordable housing component and criteria for what constitutes an affordable housing component.

This provision may affect property rights of individuals that own or are entitled to develop land that is the subject of the development approval on which the affordable housing component condition is proposed to be imposed, as it may adjust (limit) the development that may be undertaken on the land.

State facilitated development – Criteria

Clause 16 of the Amendment Regulation amends the Planning Regulation to insert new section 51B which relates to criteria for the Minister to declare an application to be SFD. This amendment may affect property rights of individuals that own or are entitled to develop land as it may limit the development that may be undertaken on the land using this development assessment pathway.

(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

Affordable Housing Component

The provisions aim to enable development conditions to be imposed for an affordable housing component. In the absence of this ability to condition the provision of an affordable housing component, the delivery of this type of housing development may be constrained, worsening the current housing challenges. This amendment is consistent with a free and democratic society based on human dignity, equality and freedom.

State facilitated development – Criteria

The provisions aim to provide the Minister with criteria in identifying applications that are appropriate for State intervention and to be streamlined through the SFD pathway, with limited appeal rights and through a holistic assessment. The provisions place limitations on what applications may be declared as SFD while incentivising particular priority development (for

example affordable housing). This is consistent with a free and democratic society as it may assist in the supply of development for which there is a social need, such as affordable housing, while ensuring that the right type of development is streamlined (for example, development with sufficient infrastructure to service growth and development in areas that are not affected by environmental matters).

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

Affordable Housing Component

The amendment achieves its purpose by allowing development conditions to be imposed which require the delivery of an affordable housing component.

State facilitated development – Criteria

The amendment achieves its purpose by prescribing criteria which the Minister must consider in declaring an application to be SFD.

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

Affordable Housing Component

There are no less restrictive and reasonably available ways to achieve this purpose. The provisions are aimed at providing greater certainty for community that the provision of an affordable housing component as part of a development approval is specifically contemplated by the Planning Act. These conditions may only be imposed on approvals for SFD and for applications which already propose to include an affordable housing component. Further, for applications made to local governments, the criteria for an affordable housing component reflects the existing definition for affordable housing. Further, applicants or owners of the land are still entitled to access processes under the planning framework to change their approval to remove the condition for an affordable housing component (for example, through the change representation period or a change application).

State facilitated development – Criteria

Prescribing criteria for SFD is the only way for the Minister to identify suitable applications which are appropriate for State intervention and the benefits afforded by the SFD pathway. Applicants that are not determined to be suitable for SFD are still able to access the standard development assessment pathway.

(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

Affordable Housing Component

In my opinion, this amendment is not an arbitrary deprivation of a person's property as the conditions may only be applied to a development approval which proposes an affordable housing component. Applicants for development approval have a change representation period which enables them to make representations to the assessment manager or the referral agency about changing the development approval during this period. This provides the applicant with

the ability to negotiate alternative conditions to be imposed instead of a requirement for the provision of an affordable housing component. Therefore, this amendment strikes a fair balance between the benefits to the community in providing for an affordable housing component, and the limitations on the property rights of the owner or person entitled to development the premises the subject of the development approval.

State facilitated development – Criteria

In my opinion, the proposed amendment to prescribe criteria for the Minister to consider in declaring an application to be SFD strikes a fair balance between the benefits gained by the applicant is using this pathway (for example, streamlined assessment, limited appeal rights) and the benefits gained by the public in expediting priority development such as affordable housing, and any limitations on property rights associated with that development.

(f) any other relevant factors

Nil.

In my opinion, the Amendment Regulation is compatible with the property rights stated in section 24 of the HR Act because the limitation on the right is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Conclusion

I consider that the *Planning and Other Legislation Amendment Regulation 2024* 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.

Meaghan Scanlon MP
Minister for Housing, Local Government and Planning
and Minister for Public Works

© The State of Queensland 2024