

# Planning Amendment Regulation (No. 2) 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*, I, Jarrod Bleijie MP, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, provide this human rights certificate with respect to the *Planning Amendment Regulation (No. 2) 2024* (Amendment Regulation) made under the *Planning Act 2016* (the Act).

In my opinion, the Amendment Regulation, 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 Queensland Government has committed to unlocking church and charity-owned land, to provide access by the community housing sector to facilitate the construction of 10,000 new homes on church and charity-owned land, including 500 homes within two years.

Section 6 and schedule 2 of the *Planning Regulation 2017* (Planning Regulation) specifies the zones in which local planning instruments can include land. The Amendment Regulation will amend the purpose statement for the community facilities zone in schedule 2 of the Regulation to state that the purpose includes allowing for residential uses if all of the dwellings:

- are an affordable housing component within the meaning of section 65A(3) of the Act; and
- on land associated with a community activity comprised of a community care centre, a place of worship or a residential care facility or on land owned, controlled or managed by an entity for the these community activities.

The Amendment Regulation will also amend schedule 6, part 2 of the Planning Regulation to include a new section 7D which prescribes as development which a local planning instrument is prohibited from prescribing as assessable development (which requires a development approval under the Act), a material change of use of premises for a dwelling house if:

- the premises are in a community facilities zone or a zone of a substantially similar type; and
- the material change of use involves repurposing a dwelling already on the premises; and
- the material change of use does not involve building work or involves the carrying out of minor building work only; and
- either no hazard or heritage overlay specified in the Planning Regulation applies to the premises or an overlay which applies to the premises does not result in the material change of use being categorised as assessable development.

The Amendment Regulation will also amend schedule 5, part 2, item 16 of the Planning Regulation to extend the infrastructure for which land can be the subject of a Ministerial Infrastructure Designation (MID) under the Act, to include social or affordable housing that is provided by a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

## 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 in the *Human Rights Act 2019* that are engaged by the Amendment Regulation are:

- the right to life (section 16);
- the right to choose where to live (section 19);
- the right to take part in public life (section 23);
- the right to privacy, family and home (section 25);
- the right of families and children to protection (section 26); and
- the right to security (section 29).

Since the Amendment Regulation supports the provisions in the Act relating to the provision of social and affordable housing, which is designed to increase housing supply, the Amendment Regulation promotes:

- the right to life, by addressing the direct threat to life and the ability to enjoy life with dignity caused by homelessness;
- the right to choose where to live, by facilitating affordable and social housing more broadly throughout the State;
- the right to privacy, family and home, which extends to a person's physical integrity, and which may be threatened by homelessness;
- the rights of families and children to protection, by providing housing security; and
- the right of a person to security, which includes the right to freedom from injury to a person's physical or mental integrity, which could be caused by homelessness.

The provisions in the Amendment Regulation will also engage the right of individuals to take part in public life, because the amendments to schedule 6, part 2 of the Planning Regulation will mean that local planning instruments cannot prescribe as assessable development a material change of use of premises for a dwelling house of the kind referred to in the new section 7D. Only assessable development requires a development approval.

Further, local planning instruments generally prescribe assessable development to be subject to impact assessment where the development is inconsistent with the purpose of the zone in which the land on which the proposed development is located. Impact assessment involves the public notification of a development application, with members of the public having the right to make submissions about the development application and then consequential appeal rights.

The amendments to the purpose of the community facilities zone in schedule 2 of the Planning Regulation that anticipates residential uses of particular kinds within the zone, may lead to development applications for those kinds of dwellings being prescribed in a local planning instrument as requiring code assessment (by way of a separate future decision of the local government having regard to all relevant local planning matters). If this was the case, this will have the corresponding effect of limiting the ability of the public to make submissions about development applications for development for those types of dwellings. However, the amendment alone does not change the level of assessment.

The limits in the Amendment Regulation to the right of individuals to take part in public life must be reasonable and demonstrably justifiable under section 13 of the *Human Rights Act 2019*. In this regard:

- The amendments to the Planning Regulation will facilitate the timely development of social and affordable housing on church and charity-owned land, including in partnership with the community housing sector, where in the community facilities zone without assessment of applications requiring public notification, to meet the housing needs, including housing affordability needs, of Queenslanders.
- There is no less restrictive or reasonably available ways to achieve the purpose of the Amendment Regulation.

Having weighed the potential benefits of the Amendment Regulation against the potential limitation on human rights identified, and in the absence of alternative ways of achieving the purpose of the Amendment Regulation, I am satisfied that the making of the Amendment Regulation strikes a fair balance between the facilitation of development of social and affordable housing on church and charity owned land and protecting the right of persons to participate in the development assessment process by making submissions about development applications for such development.

## Conclusion

I consider the *Planning Amendment Regulation (No. 2) 2024* is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonably and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

**Jarrod Bleijie MP**  
Deputy Premier, Minister for State Development, Infrastructure  
and Planning and Minister for Industrial Relations

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