Sustainable Planning Amendment Regulation (No. 4) 2014

Explanatory notes for Subordinate Legislation No. 149

made under the

Sustainable Planning Act 2009

General Outline

Short title

The short title of the regulation is the *Sustainable Planning Amendment Regulation (No. 4) 2014*

Authorising law

Section 117, 232, 246(1), 251(a), 254(1), 255A(1)(b), 255A(2)(b), 255B(1)(b), 255B(2)(b), 260(1)(d)(ii), 272(1)(c)(i), 369(1), 370(2)(a)(ii), 383(3)(c)(ii), 514(2), 515(2), 536(2), 537(2) and 763 of the *Sustainable Planning Act 2009* (SPA).

Policy objectives and the reasons for them

The overall objective of the amendment regulation is to simplify and streamline the planning and development system under the SPA and to ensure that the State Assessment and Referral Agency (SARA) can operate as efficiently and effectively as intended.

Development assessment fees

SARA was implemented on 1 July 2013 as a single point of contact to coordinate development assessment under state jurisdiction. As part of the continuous improvement of SARA, a review of development assessment fees charged by the state government for assessing a state interest triggered under Schedules 6 and 7 of the *Sustainable Planning Regulation 2009* (SPR), and for Brisbane core port land under section 283ZP of the *Transport Infrastructure Act 1994* (TIA) has been undertaken.

The fee review was subject to the Regulatory Impact Statement (RIS) process, which resulted in a new Schedule 7A and amendments to Part 3, Division 3 of the SPR. With the exception of the Brisbane core port land fees (previously endorsed for full cost recovery), the fees contained in the new Schedule 7A have been set using a consistent methodology to meet a 45% cost recovery objective for development assessment across government.

Indexation of fees

Fees and charges under the SPR are adjusted each year in line with the approved government indexation rate. The Queensland Government has determined that the annual rate for indexing fees and charges applying from 1 July 2014 to 30 June 2015 is 3.5 per cent.

Contaminated land

The Queensland Government is changing the type of assessment for development on contaminated land from code assessment to compliance assessment. While the assessment of development on contaminated land is highly technical and not appropriate for self-assessment, it is a contestable function of government which can be performed equally well by private experts.

Schedule 18 of the SPR is amended to set out the matters for compliance assessment of particular development.

The change of category from code assessment to compliance assessment will reduce the regulatory burden for Queensland Government and industry. It will involve the provision of clear standards, applied by independent certifiers, ensuring a "user-pays system" for the development of contaminated land. It also provides certainty on the standard required for development approval and allows the market to set the cost of obtaining an approval. Additionally, it will reduce the delay costs for developers as the site need only be suitable for the use by the time it is used for that purpose, and does not need to be decontaminated until after other development approvals are obtained.

In addition, the trigger for assessment for a material change of use (MCU) relating to contaminated land matters is simplified. Historically the trigger resulted in a number of unnecessary referrals to the Queensland Government. The new trigger focuses on higher risk activities, such as the use of land for a place regularly frequented by children or the elderly. It will provide greater certainty about whether development is triggered or not.

The regulation will only trigger those developments which are making a MCU from a non-sensitive use (e.g. an industrial use) to a sensitive use (e.g. to child care, education facilities, health care facilities, retail, residential, recreational, sport or entertainment facilities) or a mixed use or commercial use that includes a sensitive use or to a mixed use or commercial use with underground accessible facilities (e.g. a basement carpark or workshop or utilities room or office).

This will reduce red tape as, historically, ROLs have been triggered to ensure that developers are aware that reconfiguring a lot may result in more lots being on the EMR or CLR and to raise awareness of the potential workplace health and safety dangers of carrying out operational works or building works on a contaminated site.

The criteria for assessment will be set out in the *Contaminated Land Assessment Guideline* that is made by the Chief Executive of the Environmental Protection Act and published on the Department of Environment and Heritage Protection website. The compliance permit must be in the approved form.

Unexploded ordnance (UXO)

With the changes to the assessment of contaminated land (see above), some minor amendments are also being made to the UXO referral triggers to separate these out from contaminated land. Material changes of use and reconfiguring a lot on UXO-affected land will still be triggered for State referral and assessment.

Guideline for making and amending local planning instruments

Sections 5 and 7 of the SPR prescribe the guideline for making or amending a planning scheme (including local government infrastructure plans (LGIPs)), or planning scheme policy and making a temporary local planning instrument, known as 'Statutory guideline 02/14 Making and amending local planning instruments' (SG02/14).

In amending the SPR, a new version of the guideline is referenced, thereby providing for the commencement of that new version in accordance with section 117(1) of SPA. The new version of the guideline, SG02/14, is required as a consequence of amendments made to SPA following the infrastructure charges framework reforms and other process improvements.

Self-assessable aquaculture

The Queensland government recognises that aquaculture is an innovative industry that can take a range of forms that pose different levels of risk. Low impact aquaculture should be subject to a different level of regulation to other forms of aquaculture. Low impact aquaculture has been self-assessable since March 2005. This update to the self-assessable code for low impact aquaculture was primarily to include information on new development assessment processes introduced on 1 July 2013 and to address consequences of previous amendment to the *Fisheries Regulation 2008* that limited the species that could be produced under this self-assessable code in unintended ways. The update ensures that the self-assessable code can continue to be used as intended. The updated code also increases the scale of low impact aquaculture that can proceed self-assessably, including:

- The total water surface area permitted for aquaculture of indigenous freshwater fish has increased from five hectares to ten hectares;
- The total floor area permitted for aquaculture of indigenous freshwater fish outside of their natural range, non-indigenous freshwater fish and indigenous marine fish has increased from 50 to 100 square metres.

Amendment of the Sustainable Planning Regulation and the SDAP to reflect this update to the self-assessable code will reduce red tape, and thus encourage low impact aquaculture development whilst still managing biosecurity and fish health issues effectively.

Development on land adjoining Fish Habitat Areas

During the significant planning reform that introduced the State Assessment and Referral Agency (SARA), development on land adjacent to a declared Fish Habitat Area was inadvertently changed from requiring referral to DAFF as an advice agency to referral to the Chief Executive DSDIP as a concurrence agency. This amendment removes the referral triggers in Schedule 7, for development on land that **adjoins** a declared fish habitat area. If not removed, these triggers would have had unintended consequences for owners of land adjoining a declared fish area. Declared Fish Habitat Areas continue to be protected. Development that is completely or partly within a declared fish habitat area will remain a trigger under Schedule 7. Furthermore, the single State Planning Policy that was introduced in 2013 includes the State's interests in declared fish habitat areas and requires that local government planning include measures to protect them from impacts of development on land adjoining them.

Priority development areas
Schedule 3 identifies development that is assessable or self assessable by the State under SPA. The amendments identify particular aspects of Priority Development Area (PDA) - related development that cover a number of activities including various works *in* a PDA that do not require assessment by the State under SPA.

To eliminate potential ambiguity with the practical application of these provisions in Schedule 3, the amendments provide that PDA-related development is also captured. The purpose of the amendments is to clarify the existing Schedule 3 provisions, by providing for circumstances where works extending beyond the boundaries of a PDA, but necessary for a PDA, are required. Examples include the provision of trunk infrastructure, such as stormwater outlets and road connections, which are subject to an existing PDA development approval.

Infrastructure charges framework
The Queensland Government has introduced a long-term infrastructure planning and charging framework that is certain, consistent and transparent and which supports local government and distributor-retailer (local authority) sustainability and development feasibility in Queensland.

These reforms also provide the opportunity to align the distributor-retailer infrastructure charging and planning arrangements under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act) with the local government framework under SPA.

SDAP
The definition of SDAP publication date in Schedule 26 of the SPR is necessary to remove confusion, ensure consistency and align with the changes in government policy expressed through an updated version of SDAP.

Special fire services – interconnected alarms
As a result of the amendments to the NCC, Class1 (houses), sole occupancy units in Class 2 and 3 buildings (residential units) and Class 4 (caretaker dwelling) parts of a building were required to be referred to the QFES. The referral of these building classifications for this purpose is considered to be unnecessary due to the low risk involved.

Amendment of the SPR to exclude Class 1, sole occupancy units in Class 2 and 3 buildings and Class 4 parts of a building with interconnected alarms from being referred to the QFES will avoid the introduction of red tape and additional costs

Achievement of policy objectives

The amendments to the SPR support achievement of the overall policy objectives by:

Development Assessment Fees
The amendments to the SPR support achievement of the overall policy objectives through:

- A new Schedule 7A which includes fees for all triggers under Schedule 6 and Schedule 7 of the SPR based on achieving 45% cost recovery across government for development

assessment; and new fees for development on Brisbane core port land under s283ZP(1) of the TIA to more closely reflect full cost recovery.

- The introduction of Parts 1 and 2 within Schedule 7A, which assist in distinguishing assessment manager fees from concurrence agency fees to provide greater clarity for applicants.
- The introduction of a 50% concession for non-profit organisations undertaking eligible development.
- The ability for relevant aspects of development which meet qualifying criteria to be "fast track" development and to pay a fee not exceeding $705 for the relevant aspect.
- A single fee to change a development approval which applies to all applications.
- A single fee for an extension request notice for development approval which applies to all applications.

Indexation of fees

Fees and charges in Schedule 20 and 21 under the SPR have been adjusted in line with the approved government indexation rate of 3.5%. This applies to Court fees and Building and Development Committee fees.

Contaminated land

The policy objectives are achieved by removing the assessment and referral triggers associated with development on contaminated land and replacing with a trigger requiring compliance assessment by an approved auditor.

Unexploded ordnance (UXO)

The policy objectives are achieved by amending the referral triggers in schedule 7 and the definition of "area management advice" in the schedule 26 (Dictionary) to separate the UXO referral triggers from the contaminated land triggers (which are removed).

Guideline for making and amending local planning instruments

Changing the date and title of SG02/14 in the SPR will prescribe the use of a new updated version of the guideline for making and amending a planning scheme, planning scheme policy or making a temporary local planning instrument.

Self-assessable aquaculture

Red tape reduction objectives are achieved by updating the self-assessable code for low impact aquaculture.

Development on land adjoining declared Fish Habitat Areas

Removing triggers for development on land **adjoining** declared fish habitat areas from the SPR is consistent with red tape reduction objectives. It simplifies the development assessment system whilst still effectively managing risks.

Priority development areas

The amendments will simplify the planning framework by eliminating ambiguity regarding the practical application of the Schedule 3 provisions. Currently, due to a lack of clarity with the current wording of the provisions, development which traverses land both within a PDA and external to a PDA requires approvals under the *Economic Development Act 2012* and SPA (i.e. two development approvals rather than one). This outcome results in a duplication

of assessment and unnecessary red tape. An example of such a scenario is the development of a stormwater outlet which starts in a PDA and ends outside of a PDA.
The amendments will improve the efficiency and effectiveness of the planning framework by:

1. clarifying that works extending beyond the boundaries of a PDA, but necessary for a PDA (PDA-related development), are captured by the provisions; and
2. ensuring that PDA-related development is not subject to two development assessment processes resulting in unnecessary duplication.

Infrastructure charges framework

The amendments to the SPR support achievement of the overall policy objectives of the infrastructure reform by:

- changing the terminology used for Priority Infrastructure Plans (PIP). In the future, infrastructure plans drafted by local governments will be referred to as Local Government Infrastructure Plans (LGIP).
- The references in the SPR to the existing Statutory Guideline (Statutory Guideline 03/14 Local Government Infrastructure Plan, dated 12 June 2014 (SG03/14) are updated to reflect the change in terminology and to reflect the new commencement date.
- amending the SPR reference to the SG03/14 to Part 2 instead of Part 5. This is to align with the change to SPA whereby the head of power for the LGIP guideline was moved to section 117(2);
- including references to guidelines which, in accordance with sections 633 and 633A of SPA, provide the parameters for determining the method for working out the cost of infrastructure the subject of an offset or refund and provide the parameters for the criteria for deciding a conversion application;
- including references to guidelines which, in accordance with section 979(3) and 979(3A) of SPA, provide the method for working out the cost of infrastructure the subject of an offset or refund and provide the criteria for deciding a conversion application;
- removing all schedules 22 and 23 of the SPR as these sections will be redundant with the implementation of the new infrastructure charges framework; and
- include a new fee within Schedule 21 (Building and Development Committee Fees) to support amendments in SPA that clarify and widen the scope of infrastructure appeals that can be heard by the Building and Development Committees. This fee supports referees to undertake site visits where necessary.

SDAP

Amending the definition of SDAP to give effect to the updated version of SDAP, which is the most current and accurate version of the document.

Special fire services – interconnected alarms

Amending Schedule 8 of the SPR to remove the referral jurisdiction for interconnected smoke alarms installed in Class1, sole occupancy units in Class 2 and 3 buildings and Class 4 parts of a building is consistent with red tape reduction objectives.

Consistency with policy objectives of authorising

The amending regulation is consistent with the main objects of the SPA that is to seek to achieve ecological sustainability by managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

This package of amendments reflects the broader government reforms to simplify the planning and development and reduce regulatory burden framework by simplifying and clarifying development assessment fees and reducing red tape.

The regulation will have the following benefits:

- A consistent fee framework for development applications which provides:
  - a more realistic level of cost recovery for development assessment services;
  - a fee framework which is consistently applied;
  - greater clarity for applicants about development assessment fees for development applications to be assessed by, or referred to, SARA.
- Reduced regulatory burden on Queensland Government and industry by changing assessment of contaminated land from code assessment to compliance assessment.
  - This will provide a user pays system with certainty about the standard development on contaminated land.
  - Reduced delay costs for developers as the site does not need to be decontaminated until after other development approvals are obtained.
  - Replacing the ROL trigger with educational material will remove the need for a State-referral for assessment of reconfiguring a lot and will reduce red tape for businesses and for government.
- Implementing SG03/14 will give effect to key infrastructure framework reforms regarding the preparation of LGIPs using a simplified and streamlined process and the introduction of a third party review process.
- Removing all of schedules 22 and 23 of the SPR will improve the overall operation and clarity of the infrastructure charges framework and streamline the functionality and usability of the SPR.
- Amending Schedule 21 (Building and Development Committee Fees) to include a new fee that will support the Building and Development Committees to undertake site visits where necessary.
- Amending the version of the self-assessable code for low impact aquaculture will enable low impact aquaculture development to continue to occur in Queensland.
- Removing the trigger for development on land adjoining a fish habitat area will reduce regulatory burden on development without significantly increasing risks to the declared fish habitat area network.
- The regulation will have the following benefits:
  - reduce the assessment burden to governments by eliminating instances where assessments under both SPA and the ED Act are required;
  - provide increased certainty to development proponents in relation to required approvals.
- Amending the definition of SDAP to give effect to the updated version of SDAP, which is the most current and accurate version of the document.
- Avoid imposing additional red tape and costs for the construction of Class1, sole occupancy units in Class 2 and 3 buildings and Class 4 parts of a building.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with the fundamental legislation principles of the *Legislative Standards Act 1992*.

Contaminated land

The reference to the 'Contaminated land assessment guideline' in schedule 18, table 3 raises the fundamental legislative principle about the sufficiency of Parliamentary scrutiny. The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assessment often arises when the power to regulate an activity is contained in a guideline. In considering whether it is appropriate that delegated matters be dealt with through a guideline, the Scrutiny of Legislation Committee took into account:

- The importance of the subject dealt with;
- The practicality or otherwise of including those matters entirely in subordinate legislation;
- The commercial or technical nature of the subject matter; and
- Whether the provisions were mandatory rules or merely to be had regard to.

Part of the reason for changing the assessment of contaminated land to compliance assessment is because it is highly technical and a contestable function of government which can be performed equally well by private experts. The guideline sets out the matters or things against which development is assessed – it does not prescribe which development requires compliance assessment and does not prescribe mandatory rules such as prohibiting certain types of development. The guideline sets out the matters that the compliance assessor should have regard to in determining that the material change of use is suitable in all of the circumstances. The technical nature of the guideline means that it sets out a number of matters to be considered, including the criteria which are currently contained in the *Environmental Protection Regulation 2008* (the 'prescribed criteria') and the standard that must be met is set out in the National Environment Protection (Assessment of Site Contamination) Measure. It is impractical to list all of these matters in schedule 18 of the *Sustainable Planning Regulation 2009.*

The guideline must be published on the Department of Environment and Heritage Protection's website. This is similar to the 'Noise measurement manual' which is currently referred to in the definition of "background level" in the *Sustainable Planning Regulation 2009.*

Consequently, the use of the guideline is considered to not breach the fundamental legislation principle.

Fast-track development

Containing criteria for fast-track development in the State development assessment provisions (SDAP) raises the fundamental legislative principle about the sufficiency of Parliamentary scrutiny. The SDAP is an external document of the executive and may be changed at will. The SDAP contain the qualifying criteria for each eligible triggered aspect of development. To qualify for fast-track assessment applications must complete the relevant qualifying criteria checklist for each relevant and eligible trigger. Due to the length and technical nature of these provisions it is considered impractical to list all the matters in schedule 7A.

Waterways spatial data layer
Similar to the contaminated land and fast-track development provisions, containing waterways spatial data layers in an external document raises the fundamental legislative principle about the sufficiency of Parliamentary scrutiny. The Guideline supporting the waterways spatial layer utilises detailed hydrological and geospatial data to determine and categorise waterways to indicate potential impact of waterway barriers. This guide is also used to determine whether a waterway barrier works can potentially proceed under the relevant Fisheries Queensland self-assessable code.

Due to the technical and geographical nature of the waterways spatial data layers, it is considered impractical to detail this spatial layer in schedule 7A.

Consultation

No consultation on the amendment of the trigger for self-assessable low impact aquaculture; updating the publication date for SDAP; or amended triggers for Unexploded Ordnances has been undertaken on the basis that the changes are administrative in nature.

Development assessment fees
A Consultation RIS was prepared in accordance with RIS Guidelines. The Consultation RIS was assessed by the Office of Best Practice Regulation (OBPR) and a letter of advice confirming its adequacy for consultation purposes was issued on 20 November 2013.

The Consultation RIS was released for public consultation from 3 February to 5 March 2014. Sixteen submissions were received as a result of the public consultation. These submissions, and the final fee proposal, were addressed in the Decision RIS. The Decision RIS was assessed as adequate to support the regulatory proposal by the OBPR on 12 May 2014.

Indexation of fees
Amendments for the indexation of fees have been developed in consultation with Queensland Treasury, the Department of Housing and Public Works and the Department of Justice and Attorney-General. These departments have advised that the proposed fee increases are appropriate.

Contaminated land
Consultation has been undertaken with the Planning Institute of Australia, the Urban Development Institute of Australia and the Australian Contaminated Land Consultants Association. There was general support for the proposed changes.

Guideline for making and amending local planning instruments
Operational officers of the Department of State Development, Infrastructure and Planning were consulted on the proposed changes for SG02/14. They were supportive.

The community has not been consulted on SG02/14. The process for the community's involvement and opportunity to comment on the making or amending of a local planning instrument is contained within SG02/14.

Development on land adjoining a Fish Habitat Area

Removing the trigger for development on land adjoining a declared fish habitat area is essentially a correction and has been agreed to by both affected agencies: the Department of National Parks, Recreation, Sport and Racing and the Department of Agriculture, Forestry and Fisheries.

Priority development areas

No consultation has occurred on the basis that this change does not create new exemptions. The change only provides for circumstances where works extending beyond the boundaries of a PDA are required for a PDA and are subject to an existing PDA Development Approval.

Infrastructure charges framework

Consequential amendments to SPR for the infrastructure charges framework have been developed in consultation with the infrastructure charges team within DSDIP.

An exclusion for the RIS system was granted on 15 January 2014. The exclusion was provided on the basis that the reform options have been extensively interrogated as the Department has already undertaken a comprehensive impact assessment process that is comparable to the RIS system.

The Department undertook consultation on the draft SG-03/14- with key local government, development industry and other state agency stakeholders. Twelve submissions were received and stakeholders were generally positive about the intent of the draft Statutory guideline. Key feedback has been assessed and incorporated where appropriate.

Special fire services – interconnected alarms

The QFES has been consulted on the proposed amendment and supports the removal of the referral for interconnected alarms in Class1, sole occupancy units in Class 2 and 3 buildings and Class 4 parts of a building.