

Planning Amendment Regulation 2022

Explanatory notes for SL 2022 No. 195

made under the

Planning Act 2016

General Outline

Short title

Planning Amendment Regulation 2022

Authorising law

Sections 43 and Section 284 of the *Planning Act 2016* (Planning Act)

Policy objectives and the reasons for them

The objectives of the *Planning Amendment Regulation 2022* (Amendment Regulation) are to:

- provide an interim policy response to the shortages of appropriate accommodation for rural workers across Queensland
- include a new use term for *battery storage facility* in the Planning Regulation
- provide that certain small battery storage facilities cannot be categorised as assessable development by a local planning instrument
- provide for relocatable classrooms and associated infrastructure at established state schools to meet enrolment requirements without the need for a material change of use approval, subject to meeting requirements to manage impacts.
- include a 2-year sunset clause to enable establishment of relocatable classrooms, whilst allowing time to explore a long-term option for including a temporal limitation for the relocatable classrooms.

Further information is provided below.

Rural Workers' Accommodation

Queensland is currently facing significant housing affordability and cost of living challenges which are projected to have long-term consequences. These issues have been exacerbated by the recent flood events, changes in household composition and a sharp increase in interstate migration arising from COVID-19.

These challenges are affecting the availability and supply of affordable housing across Queensland. Many rural towns are currently facing a significant shortage of housing stock.

The recent Housing Summit held on 20 October 2022 highlighted the many issues and challenges Queensland is facing regarding housing choice and diversity.

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) recognises the importance of rural workers' accommodation in facilitating all aspects of the agricultural supply chain and to support the many regional and local economies that rely on rural industries. To assist with supporting an accommodation solution for rural workers and relieving pressure on the existing housing stock, the Queensland Government has developed the Queensland Rural Workers' Accommodation Initiative (the Initiative).

The Initiative delivers on a key action from the Queensland Housing Summit Outcomes Report released 1 December 2022. The Initiative supports the economic recovery of Queensland's important agricultural industry - an industry that has been hit hard by the effects of COVID-19, a shortage of migrant workers, drought and natural hazard events and other social issues, such as shortage of social housing and the rising cost of living.

The Initiative comprises two key elements:

- Part A – facilitating the repurpose of existing underutilised facilities as an interim solution for rural workers' accommodation, where on premises nominated by the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister assisting the Premier on Olympic and Paralympic Games Infrastructure (the Planning Minister) and used for accommodating employees for the Initiative, and
- Part B – allowing for small scale rural workers' accommodation to proceed without a material change of use development approval, when meeting certain criteria.

The Initiative is the document made by the Planning Minister and dated 2 December 2022 and published on the website for DSDILGP.

The objective of the Amendment Regulation, together with the Initiative, is to provide an interim policy response to the shortages of appropriate accommodation for rural workers across Queensland.

The temporary legislative framework that has underpinned Queensland's response to the COVID-19 pandemic expired on 31 October 2022 and has been replaced by a limited set of temporary and targeted measures to manage COVID-19.

As the public health emergency for public quarantine and isolation ended on 31 October 2022, there is no identified need for a public health accommodation facility. The Amendment Regulation seeks to remove the current provisions pertaining to the public health accommodation facility.

Battery Storage Facility

In July 2017, the Queensland Government committed to achieving net zero emissions by 2050, with an interim target to reduce emissions by 30 per cent below 2005 levels by 2030. Following this state-based carbon reduction commitment, by 2020, each Australian state and territory set goals to achieve net zero emissions by 2050 or earlier.

The Queensland Government released the Queensland Energy and Jobs Plan (the Plan) in September 2022. The Plan outlines the key benefits of a renewable energy supply, and how renewable targets will be met with elements in the electricity system, including poles, wires, solar, wind and storage to provide Queenslanders with clean, reliable, and affordable power.

Battery storage facilities will play a key role in Queensland's transition to a low-carbon energy system and will help achieve the Plan's 70 per cent renewable energy target by 2032. Battery storage facilities store excess electricity generated from renewable energy or the electricity grid and distribute it back into the network during peak periods. They can improve the efficiency of the energy system and keep prices low by better integrating variable renewables. These facilities are necessary because they support energy security and reliability.

The installation of a battery storage facility is development under the planning framework. In some cases, a battery storage facility is ancillary to another use such as a solar farm, industrial use, or residential use, and in other cases they are considered a separate use. However, a battery storage facility is not defined as use in the Planning Regulation, so such facilities are regulated as an 'undefined use'.

The planning framework must respond to new technologies and challenges, and promote an efficient, transparent, and accountable system. Local planning instruments must be able to support development assessment processes that result in outcomes that are certain, responsive, and transparent.

Local planning instruments should also apply the lowest appropriate category of development and any appropriate provisions to address the impacts of development efficiently and effectively. Without a relevant use term for battery storage facilities, local planning instruments do not regulate these uses in a transparent or effective way as they are impact assessable.

Small battery storage facilities are being installed into the electricity network to provide solar storage, voltage management and stability for services to benefit local communities and businesses. These include small pad mounted batteries or pole mounted batteries. It is important that these facilities can be developed efficiently, and in locations where they are needed on the network.

Relocatable classrooms

Under the *Education (General Provisions) Act 2006*, a principal must enrol prospective students at a particular state school if the prospective student is entitled to be enrolled at the school. The Department of Education (DoE) must ensure state schools can respond to enrolment needs and provide relocatable classrooms and associated infrastructure when a school has experienced growth over and above current classroom capacity.

Finalised enrolment numbers are not always available before the school year starts and the timeframe to establish new classrooms is often very condensed. The planning processes required to establish new classrooms including obtaining a material change of use approval or infrastructure designation can be lengthy. This means there is a risk that the classrooms are not in place to meet enrolment needs.

Achievement of policy objectives

Rural Workers' Accommodation

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

A regulation may also prohibit a local categorising instrument from stating that certain development is assessable development.

The Amendment Regulation prescribes different regulatory provisions for each Part of the Initiative.

The Amendment Regulation provides limited exemptions for appropriate sites to facilitate development for accommodation for rural workers, while longer-term solutions are being worked through for both on-farm and within local towns and with local government.

The Initiative will be in effect for a limited period until 9 December 2025, unless revoked or otherwise extended by the Planning Minister. This will allow for an expedited response to the shortages of appropriate accommodation for rural workers across Queensland, while longer-term accommodation planning solutions are being worked through with local government for accommodation both on-farm and within local towns.

Further, to ensure that the provisions are having the intended effect, a sunset clause is included in the Amendment Regulation that will cease the effect of these provisions relating to accommodation for rural workers three years from commencement of the Amendment Regulation.

Repurposing existing underutilised facilities

Noting current material supply chain shortages, cost escalations and a lack of readily available construction skills, the Initiative seeks to assist in the repurposing of underutilised existing facilities for accommodation to meet unprecedented demand for accommodation in the rural sector and take pressure off existing housing stock.

The Amendment Regulation provides that particular development for accommodating employees of rural uses for Part A of the Initiative is accepted development, where:

1. For building works and operational works:
 - the development is carried out on premises nominated by the Planning Minister under Part A of the Initiative
 - the development is for accommodating rural workers for the purpose of the Initiative
 - any building work complies with the standard building provisions under the *Building Act 1975* and stated in the Nomination Notice given by the Planning Minister, and
 - any building work does not involve the construction of a new building for sleeping accommodation.

2. For carrying out a material change of use:

- the premises have been nominated by the Planning Minister, and the use must be for accommodating employees of a rural use for Part A of the Initiative; and
- any building works stated in the Nomination Notice issued by Planning Minister have been carried out.

Development approval will still be required if the proponent wishes to reconfigure (i.e. subdivide) their land, as DSDILGP considers this may constitute a 'new development' rather than a repurpose of an existing facility.

Nominated Premises will obtain the benefit of the exemption under the Planning Regulation while the Initiative is in effect, until 9 December 2025 (unless revoked or otherwise extended by the Planning Minister). No existing lawful use rights will accrue for premises beyond the cessation of the Initiative. The intent is that when that program ends, the use will no longer be for the purpose of the program, and any accommodation will be a different use requiring development approval.

Small scale rural workers accommodation

DSDILGP has been working with the Department of Agriculture and Fisheries to identify where the planning framework can assist in delivering small-scale rural workers' accommodation to address the rural worker shortage.

For Part B of the Initiative, the Amendment Regulation seeks to facilitate the development of rural workers' accommodation so that agricultural workers may live affordably and in proximity to their work and allow farmers to accommodate seasonal workers for their employment needs and relieve local demand on housing stock.

This is achieved through the proposed amendments to the Planning Regulation to provide that a material change of use for rural workers' accommodation is exempt from requiring local government approval where:

- the premises are in a rural zone (defined by the planning scheme), and
- the premises are not less than 25ha, and
- the development does not result in accommodation with a total capacity to accommodate more than 20 employees of the rural use across the premises on which the accommodation use is carried out, premises on which the rural use is carried out, and adjoining premises owned by the same person, and
- the development does not involve new or changed vehicular access between premises and a road, and
- no part of the premises is in a flood hazard area, bushfire hazard area or a landslide hazard area (identified in a State or local planning instrument).

The Amendment Regulation applies to "rural workers' accommodation", which is accommodation for employees of a rural use, if the premises and the premises where the rural use are carried out are owned by the same person.

A proponent may still require other development approvals under the Planning Act for development for rural workers' accommodation, for example building works approval to ensure compliance with appropriate building standards including the relevant fire and safety standards.

To ensure that the provisions are having the intended effect, a sunset clause is included that will cease the effect of these provisions three years from commencement. Any development for a material change of use that commences in the three year period, may have existing use rights to operate lawfully after the cessation of the provisions.

A local government can continue to require material change of use approval for rural workers' accommodation where the development does not meet the requirements set out in Schedule 6 of the Planning Regulation.

Removal of the public health accommodation provisions

The Amendment Regulation also seeks to remove the current provisions pertaining to the public health accommodation facility located on Lot 4 on SP296105.

Battery Storage Facility

The Amendment Regulation prescribes a new use term for a battery storage facility. This enables a local government to amend its planning scheme to incorporate the new use term and establish appropriate categories of development and assessment benchmarks, in a way that responds to the local circumstances. This provides a transparent assessment pathway for this essential infrastructure as proponents will have a clear assessment pathway for battery storage facility uses once implemented by local planning schemes

The Amendment Regulation provides for smaller battery storage facilities to be unable to be made assessable development by a local planning instrument. This applies to:

- pad-mounted batteries up to 15m² in footprint
- pole-mounted batteries up to 2m³ in size.

Battery storage facility includes the use of premises for infrastructure or works if the use relates, or is ancillary, to the battery storage device, such as electrical works, fencing, foundations, and vehicular access.

However, there will continue to be examples where batteries are ancillary to other uses, and not intended to be separately regulated by this definition, for example:

- household batteries where stored energy is to be used on the premises
- batteries associated with commercial/industrial uses where stored energy is to be used on the premises.

Determining whether the battery storage facility is ancillary to another use must be determined on a case-by-case basis. Key features of an ancillary use are:

- must be related to the primary use
- must have an exclusive functional relationship to the principal use
- the portion of the use determined to be ancillary is subordinate to the primary use both in terms of its scale and impact.

The Amendment Regulation will ensure this essential community infrastructure can be incorporated into electricity networks efficiently and where it is needed without unnecessary regulatory burden. However, it does not remove the need to comply with all other relevant laws or standards including for example, electrical safety, or workplace health and safety.

Relocatable classrooms

The Amendment Regulation will allow for DoE to provide relocatable classrooms and associated infrastructure at established state schools experiencing growth over and above current classroom capacity without a development approval under the relevant planning scheme or an infrastructure designation.

The Amendment Regulation provides that the development must meet prescribed requirements, including maximum number of classrooms, maximum building height, setbacks and risk avoidance measures for matters such as bushfire and flood. The provisions will streamline the delivery of relocatable classrooms and associated infrastructure to meet enrolment needs.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the purpose of the Planning Act to establish an efficient, effective, transparent, integrated, coordinated and accountable system of land use planning and development assessment to facilitate the achievement of ecological sustainability.

The Amendment Regulation is also consistent with the purpose of the Planning Act that states a planning regulation may be a categorising instrument, and may prohibit a local categorising instrument from stating that certain development is assessable development.

The Amendment Regulation:

- gives statutory effect to the Initiative
- protects and gives effect to the State interests of Housing supply and diversity; Energy and water supply; Liveable communities and Development and construction in the State Planning Policy 2017.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objectives, other than the Amendment Regulation. The Planning Act permits a regulation to set the category of assessment, to categorise development and prescribe assessment benchmarks, and to prohibit a local categorising instrument from stating that development is assessable development.

Benefits and costs of implementation

The cost of implementing the amended regulatory framework will be met within existing budget allocations, and the resources used to manage the existing regulatory framework will continue to be used to administer the amended framework.

Rural Workers' Accommodation

The Amendment Regulation will provide an interim policy response to the shortages of appropriate accommodation for rural workers across Queensland.

Battery storage facility

The amendments relating to battery storage facilities does not generate any implementation costs. It will enable local governments to incorporate the use term into their planning schemes using the standard plan making processes.

The use term will benefit local governments, applicants and the community by providing the opportunity to establish a clear assessment pathway, including categories of development and assessment and assessment benchmarks to assess any impacts of battery storage facilities, enabling a streamlined and transparent assessment pathway for this essential infrastructure.

The amendments to make smaller battery storage facilities unable to be categorised as assessable development in a local planning instrument will benefit government, the community, and applicants. It will ensure that this essential community infrastructure is able to be incorporated into electricity networks efficiently where it is needed without unnecessary regulatory burden.

Relocatable classrooms

The existing planning pathways to establish relocatable classrooms are Ministerial Infrastructure Designation (MID) and the development approval process. Both pathways can be lengthy and uncertain due to variability in local government planning scheme material change of use thresholds. This means there is risk that the infrastructure is not in place to meet enrolment needs.

The Amendment Regulation supports DoE's ability to respond to enrolment needs and provide relocatable classrooms and associated infrastructure when a school has experienced growth over and above current classroom capacity and enables establishment of the infrastructure in a timely manner.

The Amendment Regulation reduces regulatory burden by enabling the establishment of relocatable classrooms and associated infrastructure for state schools without requiring a development approval under the relevant local planning scheme where the works meets the prescribed requirements. The requirements to satisfy for accepted development ensure that potential impacts are appropriately managed.

The Planning Regulation already prescribes that building work by or for the state or public sector entity is accepted development to the extent the building work complies with the

relevant provisions for the building work. Further, it prescribes that operational work by or for a public sector entity authorised under a state law to carry out the work is accepted development under the relevant local planning scheme. The Amendment Regulation provides clarity that all development for relocatable classrooms, where it meets the criteria cannot be made assessable under a local planning scheme.

Development that does not meet the requirements may be assessable development under the local planning scheme and subject to any relevant requirement or the appropriate development assessment process, or the MID process.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles.

Consultation

Rural Workers' Accommodation

The agriculture industry, represented by Growcom, has indicated the results of their consultation identified a need to support smaller farming enterprises, given larger operators have self-managed working through the planning scheme requirements for larger-scale facilities.

The Local Government Association of Queensland (LGAQ) has agreed to continue working closely with the Queensland Government to develop the guidance material or model codes to ensure a longer-term outcome endorsed by individual local governments. However, the LGAQ maintains its existing policy position which supports local governments retaining decision-making responsibilities for planning matters including for accommodation for rural workers. To address these concerns, a sunset clause has been applied to the operative provisions in the Amendment Regulation to ensure the provisions are limited to 3 years.

Battery Storage Facility

The Department of the Premier and Cabinet (DPC), Queensland Treasury (QT), the Department of Energy and Public Works (DEPW), Queensland Fire and Emergency Services (QFES), the Department of Environment and Science (DES), the Office of Industrial Relations (OIR), Energy Queensland, Powerlink and the LGAQ were consulted regarding the amendments and support the proposed amendments.

Relocatable classrooms

DPC, QT, DoE, the Department of Transport and Main Roads (DTMR), QFES, and DEPW were consulted regarding the amendments and have provided feedback supportive of these provisions. DoE and DTMR's feedback have been addressed in the Amendment Regulation.

The Office of Best Practice Regulation (OBPR) was consulted under the *Queensland Government Guide to Better Regulation* (the guidelines) to determine if further assessment was required under the regulatory impact analysis system.

OBPR considers the proposals are designed to reduce the burden of regulation in delivering small-scale rural workers' accommodation and local accommodation to address the rural worker shortage, and reduce the burden of regulation on battery storage facility proponents and DoE. It is reasonably clear there are no significant adverse impacts. OBPR advised that no further regulatory impact analysis is required under the guidelines.

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