Planning (Assessment Fees and Other Matters) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 92

made under the

Planning Act 2016

General Outline

Short title

Planning (Assessment Fees and Other Matters) Amendment Regulation 2023

Authorising law

Sections 17, 36, 37, 116, 117 and 284 of the *Planning Act 2016*

Policy objectives and the reasons for them

The objectives of the *Planning (Assessment Fees and Other Matters) Amendment Regulation 2023* (Amendment Regulation) are to*:*

- give effect to changes made to the Minister's Guidelines and Rules (MGR) by reflecting the new date in the *Planning Regulation 2017* (Planning Regulation)
- make a material change of use, where for a temporary detention centre that is declared under the *Youth Justice Act 1992* (Youth Justice Act), to not be able to be made assessable development by a local planning scheme
- make the prescribed fee units commensurate with the State Assessment and Referral Agency's (SARA) time and effort involved in undertaking the assessment of material change of use applications requiring referral due to proximity to state transport corridors, and the scale of the operational works carried out in tidal waters.

Further information is provided below.

Minister's Guidelines and Rules (MGR)

In accordance with Section 17, 36, 37, 116 and 117 of the Planning Act, the Amendment Regulation will give effect to changes made to the MGR by reflecting the new date in the Planning Regulation.

Temporary detention centres

Following recent emergency situations including natural disasters and COVID-19, the Department of Youth Justice, Employment, Small Business and Training (DYJESBT) identified that amendments to Youth Justice Act were required to ensure essential corrections and youth justice services can continue to be delivered during an emergency. These amendments commenced on 2 June 2023.

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) has been liaising with DYJESBT since 2021 about how the planning framework can assist in providing continuity of services in emergency situations.

Prior to the amendments to the Youth Justice Act, generally a young person in a detention centre could only lawfully be moved to a location that is not a detention centre in a declared emergency and only when the immediate safety of a person was at risk.

The Youth Justice Act amendments established a clear process to allow for the relocation of detainees, by providing the chief executive of DYJESBT powers, subject to the approval of the Minister, to:

- declare an existing youth detention centre to be disaster-affected
- declare a place to be a temporary detention centre for a period of seven days. This may be extended during the declared disaster-affected period.

When selecting a place for a temporary detention centre, the Chief Executive must consider matters including:

- the existing use of the site
- uses for the site allowed under a planning instrument such as a planning scheme or approval
- impacts of a temporary detention centre on existing uses in the surrounding area
- the suitability of the site to meet the needs of the young people who may be detained.

The Planning Act does not include any provisions to exempt a temporary detention centre from requiring a material change of use approval. The matter is currently determined by a relevant local planning scheme under the land use definition of detention facility.

Depending on the relevant local government, material change of use applications often take longer than six months to be decided. Given the nature of disasters, a faster pathway is required to secure temporary accommodation for young people in the event of an emergency that prevents all or part of a detention centre from being safely utilised. Amendments are therefore required to align the Planning Regulation with the amended Youth Justice Act.

State referral development assessment fees

Currently, certain development applications trigger an assessment with SARA under Schedule 10 of the Planning Regulation. SARA has identified issues with several development assessment triggers since the implementation of the Planning Regulation, where fees payable for the development assessment are not commensurate with the work undertaken or assessment required.

Consultation was undertaken by SARA with the Department of Transport and Main Roads (DTMR) in relation to these issues and an agreement was reached to amend the Planning Regulation to address two issues that were determined as priorities to reduce the unnecessary administrative regulatory burden, these are:

- a development application for a material change of use proposed on a premises within 25 metres of a state-controlled road triggers assessment by SARA

- a development proposed adjacent to a road that intersects with a state-controlled road (within 100 metres of the intersection) also triggers an assessment.

Payment of development assessment fees is required with each trigger. Developments that meet both triggers result in an applicant paying two separate fees to be considered a properly made application. As SARA only undertakes a single assessment, one fee is required to be refunded to the applicant once paid, creating an unnecessary administrative burden.

The assessment fees for operational works carried out in tidal waters has three categories of fees. Any development not listed under the first two categories is captured under the third category, '8(c) otherwise' and requires the payment of a fee of 13,715 fee units. Both applicants and SARA assessment managers have raised concerns regarding the suitability of the fee units identifying it is not at the appropriate fee price relevant to 8(c), as most often the operational works undertaken costs less than the application fee for assessment. The fee structure of item 8 does not include a mid-range fee item, evidenced in other triggers as 6,859 fee units, which is determined more appropriate for this trigger.

Achievement of policy objectives

Minister's guidelines and rules (MGR)

Section 17 of the Planning Act requires the Planning Minister to make an instrument that contains guidelines and rules for making or amending planning instruments.

The Amendment Regulation will give effect to the MGR dated July 2023.

Temporary detention centres

The amendments to the Planning Regulation will make a material change of use not able to be made assessable development by a local planning scheme where for a temporary detention centre declared under the Youth Justice Act. This is consistent with the approach used for vaccination centres during COVID-19.

State referral development assessment fees

The amendments to the Planning Regulation will amend the prescribed fee units to be commensurate with SARA's time and effort involved in undertaking the assessment of material change of use applications requiring referral due to proximity to state transport corridors, and the scale of the operational works carried out in tidal waters.

The Amendment Regulation will:

- remove the requirement for two separate fee items for a development proposed over premises where it is both within 25 metres of a state-controlled road and adjacent to a road that intersects with a state-controlled road (within 100 metres of the intersection)

- reduce '8(c) otherwise' fee price from 13,715 fee units to 6,859 fee units to reflect a midrange fee item as reflected in other trigger items.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the Planning Act, that is to provide an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning that facilitates 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 protects and gives effect to the State interests of Safety and Resilience to Hazards, and Development and Construction, in the State Planning Policy 2017.

Inconsistency with policy objectives of other legislation

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

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, prescribe assessment benchmarks, set applicable fees, and to prohibit a local categorising instrument from stating that development is assessable development.

Benefits and costs of implementation

Minister's guidelines and rules

The cost of implementing the Amendment Regulation will be minimal and will be met within existing budget allocation. The resources used to manage the existing regulatory framework will continue to be used to administer the amended framework.
Temporary detention centres

There are no significant resource or financial implications associated with this amendment.

State referral development assessment fees

The impact on revenue will be negligible as in accordance with SARA Practice Note 6: Implementing and discounting SARA fees, refunds are frequently given for both these fees.

Ensuring fees in the Planning Regulation are commensurate of assessment being undertaken will reduce the administrative burden on both SARA officers processing the refunds and have a positive impact on applicants in development costs.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

No consultation on the Amendment Regulation has been undertaken outside of government agencies as the amendments are identified as consequential amendment changes and changes required to reduce the administrative burden related to development assessment. These changes do not impact policy outcomes.

However, public consultation on the proposed MGR amendment was undertaken between 24 April and 26 May 2023 and included releasing the draft amendment, publishing information on DSDILGP website and writing to affected local governments.

A self-assessment by DSDILGP determined that further regulatory impact analysis in relation to the changes to the MGR and amendments to Schedule 6, Part 2 of the Planning Regulation are not required as the proposals are excluded under category (a) of the guidelines – Regulatory proposals that make consequential amendments.

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 for amendments in relation to the State referral development assessment fees.

OBPR considers the proposal is designed to reduce the burden of regulation and is administratively more efficient while still meeting full cost recovery; it is reasonably clear there are no significant adverse impacts.

OBPR advised that no further regulatory impact analysis is required under the guidelines.