

# Supporting regional and State significant businesses through the urban encroachment provisions in the planning framework

Consultation paper – April 2023

The Department of State Development, Infrastructure, Local Government and Planning connects industries, businesses, communities and government (at all levels) to leverage regions' strengths to generate sustainable and enduring economic growth that supports well-planned, inclusive and resilient communities.

## Copyright

This publication is protected by the Copyright Act 1968.

## Creative Commons licence

[Go here](#) and copy and paste the one row table with the correct Creative Commons licence statement and paste it here. Choose the right statement by [referring to Connect](#).

You are free to copy, communicate and adapt this publication as long as you attribute it as follows:

© State of Queensland, the Department of State Development, Infrastructure, Local Government and Planning, July 2022.

Third party material that is not licensed under a Creative Commons licence is referenced within this document. All content not licensed under a Creative Commons licence is all rights reserved. Please contact the Department of State Development, Infrastructure, Local Government and Planning /the copyright owner if you wish to use this material.

## Translating and interpreting service



If you have difficulty understanding a document and need an interpreter, we provide access to a translating and interpreting service. You will not be charged for this service. To contact the Translating and Interpreting Service, telephone 131 450 and ask them to telephone the Department of State Development, Infrastructure, Local Government and Planning on +61 7 3328 4811.

## Disclaimer

While every care has been taken in preparing this publication, to the extent permitted by law, the State of Queensland accepts no responsibility and disclaims all liability (including without limitation, liability in negligence) for all expenses, losses (including direct and indirect loss), damages and costs incurred as a result of decisions or actions taken as a result of any data, information, statement or advice, expressed or implied, contained within. To the best of our knowledge, the content was correct at the time of publishing.

Any references to legislation are not an interpretation of the law. They are to be used as a guide only. The information in this publication is general and does not take into account individual circumstances or situations. Where appropriate, independent legal advice should be sought.

Copies of this publication are available on our website at [www.statedevelopment.qld.gov.au](http://www.statedevelopment.qld.gov.au) and further copies are available upon request.

## Contact us

☎ +61 7 3328 4811 or 13 QGOV (13 74 68)

✉ [info@dsmip.qld.gov.au](mailto:info@dsmip.qld.gov.au)

🌐 [www.statedevelopment.qld.gov.au](http://www.statedevelopment.qld.gov.au)

✉ PO Box 15009, City East, Queensland 4002

🏠 1 William Street, Brisbane 4000

Source number D23/12398

# Contents

Summary.....	2
Summary of proposed changes.....	2
How to have your say .....	3
Proposed changes .....	4
Create a new change to registration application process.....	4
Simplify the renewal process.....	5
Remove the requirement to re-register where a premises obtains a new approved environmental authority and/or development approval.....	6
Add a minimum period for public consultation for urban encroachment applications (new or changed) .....	7
Appendix 1 - Key terms and concepts .....	8



## Summary

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) is seeking your views about some proposed changes to the urban encroachment provisions within the planning framework to support regional and State significant businesses.

Urban encroachment provisions for hard to locate impact generating uses (such as noise, dust, aerosols, fumes, light or smoke) have existed as part of Queensland's planning framework since 2009.

The provisions were introduced to create an environment that enables changes to be made through local planning schemes that increase densities within existing urban areas, while balancing the needs of existing key employment generating or hard to locate uses.

Many local governments aim to protect key employment generating areas, such as industrial areas, from encroaching sensitive development (such as residential, food and beverage or service industry uses). However, changes to planning policy or a council determining there is an overriding need for a development sometimes results in an approved development that encroaches on buffer areas of an existing use. Where these approvals set a precedent for other development this can result in cumulative impacts or pressure on existing lawfully operating businesses, increasing the possibility of court proceedings where users of these newer sensitive developments (such as new home purchases or newly established businesses) encounter impacts from existing lawfully operating businesses in the area. This may result in the loss of a lawfully operating business and the economic benefits it brings to a region or the State.

The existing urban encroachment provisions seek to protect a registered, lawfully operating business from potential court proceedings for impact nuisance matters, brought by property owners/occupiers in the surrounding area. The Minister for Planning assesses and decides registration applications against set requirements, including the businesses economic, infrastructure or heritage significance in the region or State.

The changes proposed in this paper are aimed at reducing regulatory burden and increasing business certainty once an initial registration application has been assessed and granted.

## Summary of proposed changes

An overview of each of the four (4) proposals contained in this paper, including an explanation of each, is provided in the table on the following page.

	<b>Current process</b>	<b>Proposed change</b>	<b>Reason for the change</b>
<b>Proposal 1</b>	An application for a new urban encroachment registration is required when proposing to change the details of an existing urban encroachment registration	Create a new change registration application process	<ul style="list-style-type: none"> <li>Allows flexibility in the registration process and enables the premises to modify their existing registration to address changes to the surrounding land use</li> <li>Balances the protection of industry with the rights of the public by requiring public consultation to be undertaken by the owner of the premises</li> <li>Reduces regulatory burden on industry and creates a more efficient application process</li> </ul>
<b>Proposal 2</b>	An application for a new urban encroachment registration is required when renewing an existing urban encroachment registration	Simplify the renewal process	<ul style="list-style-type: none"> <li>Supports economic growth and reduces unnecessary processes and regulatory burden by creating a more efficient renewal process</li> <li>Reduces the time and cost of preparation and consultation for a registration renewal</li> </ul>
<b>Proposal 3</b>	A new urban encroachment registration is required when a new or amended environmental authority or development approval is approved, which increases impact limits of a lawfully operating premises	Remove the requirement to re-register where a premises obtains a new approved environmental authority and/or development approval	<ul style="list-style-type: none"> <li>Allows greater flexibility for regional or State significant businesses to grow within their approved limits</li> <li>Provides for the immunity from litigation established under the original registration to continue where a new environmental authority or development approval takes effect and notification to the affected area has occurred</li> <li>Removes duplication where the planning and environmental frameworks have already considered the potential impacts and issued approvals that are in effect</li> </ul>
<b>Proposal 4</b>	The current urban encroachment provisions do not specify a minimum period for public consultation	Add a minimum period for public consultation for urban encroachment applications (new or changed)	<ul style="list-style-type: none"> <li>Provides certainty and procedural fairness to applicants and removes ambiguity</li> <li>Ensures consistency amongst registration applications and ensures adequate public consultation has been undertaken</li> </ul>

## How to have your say

We want to hear what you think of the proposals. Questions throughout the paper may help to guide your feedback.

Your feedback will help shape the changes we make to the planning framework to support regional and State significant businesses.

Have your say by providing feedback through the 'Have your say' portal at the website [haveyoursay.dsdilgp.qld.gov.au/improvements-to-queenslands-planning-framework](https://haveyoursay.dsdilgp.qld.gov.au/improvements-to-queenslands-planning-framework). Feedback will be accepted until 5pm on 5 May 2023.

If you have any questions about this paper, please refer to the Frequently Asked Questions section of the Have your say portal. If your question remains unanswered, please contact [BestPlanning@dsdilgp.qld.gov.au](mailto:BestPlanning@dsdilgp.qld.gov.au).

# Proposed changes

## Create a new change to registration application process

Currently, an application for a new urban encroachment registration is required when proposing to change the details of an existing urban encroachment registration. Should the owner of the registered premises wish to amend the affected area, there is currently no process to allow the premises to apply to the Planning Minister to amend an existing registration. This means that the owner of the premises must undertake the full registration process again, including the requirement to submit documentation including proof of economic, infrastructure or heritage significance, proof of compliance with development approval and/or environmental authority limits and conditions, details of complaint management, and outcomes of public consultation.

The proposed changes enable a premises to apply to the Planning Minister to change the 'affected area' within an existing urban encroachment registration, instead of undertaking a new registration. For example, the registered premises may wish to modify or expand the 'affected area' in the case the development intent of the surrounding area changes through a planning scheme amendment or development proposal. The property owners and occupiers within the proposed newly affected area will be consulted and afforded appeal rights about the Planning Minister's decision on the change application. Consultation and appeal rights would not apply to property owners and occupiers within the existing affected area that are not proposed to be modified by the change application.

The proposed changes allow flexibility in the registration process and enable the premises to modify an existing registration in response to changes in the surrounding area without requiring a new registration. This change is intended to balance the protection of businesses with the rights of the public by requiring public consultation to be undertaken in the proposed newly affected area.

Proposal 1	Create a new change to registration application process
<b>The change</b>	» Include a new process allowing for the assessment and approval of a change to the 'affected area' within an existing urban encroachment registration.
<b>The detail</b>	» Allows the owner of the registered premises to apply to the Planning Minister to change the 'affected area' within an existing urban encroachment registration. » Public consultation with any newly proposed affected area will be required. » The owner of the premises will be required to submit relevant evidence including proof of potential encroachment by the newly affected area and results of public consultation. » Public notification of the change of registration (if approved) will be required and appeal rights provided to any newly affected area and registered premises about the Planning Minister's decision.
<b>Legislation</b>	» Planning Act, Chapter 7, Part 4
<b>Question</b>	» How do you think owners and occupiers might be impacted if lawfully operating, State or regionally significant businesses have additional protection through an urban encroachment registration? » For industry, do these proposed changes make urban encroachment registrations more user friendly and enticing?

## Simplify the renewal process

A renewal of a registration is an application to extend the currency period of an existing urban encroachment registration, which is generally required every 10 to 25 years depending on the details set out in the Minister's approval of the registration. Under the current provisions, a renewal application requires the same application process and consultation requirement as a new urban encroachment registration, even when no other changes are proposed to the registration.

The proposed changes provide a simpler process to renew an existing registration. Under the proposed changes, the owner of the premises will still be required to provide sufficient evidence of economic, infrastructure or heritage significance, compliance with development approval and/or environmental authority limits and conditions, and complaint management to the Planning Minister for consideration. These changes provide certainty to registered premises that remain compliant with their approved environmental and development permits and reduces the costs of preparation and consultation for the registration.

The requirement for consultation with property owners and occupiers within the affected area as part of a renewal application is proposed to be removed. However, the affected area will still be notified of the Planning Minister's decision to approve an application to renew an urban encroachment registration and will still have the right to appeal the Planning Minister's decision to renew a registration.

The affected area will maintain the ability to make a complaint to the relevant authority under the environmental nuisance provisions and have the complaint investigated. Should an investigation deem the premises to be non-compliant with development approval and/or environmental authority limits and conditions, the affected area may progress litigation. Additionally, any written complaints received by the owner of the premises within a year before the application is made must be provided to the Planning Minister for consideration.

### Proposal 2 Simplify the renewal process

- |                    |   |
|--------------------|---|
| <b>The change</b>  | » Remove the requirement to undertake a new urban encroachment registration process where there is no change to the 'affected area' proposed in the renewal.  |
| <b>The detail</b>  | <ul style="list-style-type: none"> <li>» Where a lapsing registration is renewed, public consultation will not be required, given there is no proposed change to the affected area.</li> <li>» Limited documentation will be required to be submitted by the applicant to reduce onerous processes. Documentation to allow the Planning Minister to assess economic, infrastructure or heritage significance, complaints management, and compliance with existing development and environmental approvals will be required.</li> <li>» The premises will undertake certain notification requirements if the renewal is approved.</li> <li>» Appeal rights are provided to the property owners and occupiers within the affected area and registered premises about the Planning Minister's decision.</li> </ul> |
| <b>Legislation</b> | » Planning Act, Chapter 7, Part 4   |
| <b>Question</b>    | <ul style="list-style-type: none"> <li>» How might this proposal impact owners and occupiers within the affected area?</li> <li>» For industry, would the proposed changes to the urban encroachment processes likely ease financial and resourcing burdens of maintaining a registration and provide opportunities to improve your business?</li> <li>» For industry, do these proposed changes make urban encroachment registrations more user friendly and enticing?</li> </ul>  |

## Remove the requirement to re-register where a premises obtains a new approved environmental authority and/or development approval

Under the current framework, the restriction on legal proceedings imposed on the affected area does not apply if the owner of premises obtains a new development approval and/or environmental authority that authorises the increase in impact generation. The owner of the premises is required to apply to the Planning Minister for a new registration in this instance.

The proposed changes will allow the parameters of any existing registration to follow any new development approval and/or environmental authority granted to the premises if the owner of the registered premises has given notice to the affected area and the Planning Minister of the new approvals. This means the owner of the registered premises would no longer be required to undertake a re-registration process for a modification or expansion to the premises that has been granted under the necessary planning and environmental approvals.

The premises is provided flexibility to continue operating with the urban encroachment registration protection, without having to undergo a re-registration process. These changes provide for business continuity and certainty to further grow and provides continued operation to the registered premises within the new approvals.

Whilst public consultation regarding the continued registration of the premises would not be required, public consultation may be a requirement of the development approval process depending on the local planning scheme's level of assessment. These changes do not impact on the public's ability to make a complaint to the relevant authority and have that complaint investigated. Should an investigation deem the premises to be non-compliant with development approval and/or environmental authority limits and conditions, the affected area may progress litigation.

### **Proposal 3 Remove the requirement to re-register where a premises obtains a new approved environmental authority and/or development approval**

- The change** » Remove the requirement for a premises to undertake a new urban encroachment registration when a new development approval or environmental authority is approved that changes allowable impact levels for the premises
- The detail** » An existing registration will remain in effect should a new or amended development approval or environmental authority take effect on the premises.
- » Within 20 business days of the new or amended development approval and/or environmental authority taking effect, the owner of the premises is to provide notice to the affected area and the Planning Minister of such, and update the premises website to reflect the new information.
- » No public consultation on the continued registration of the premises will be required.
- Legislation** » Planning Act, Chapter 7, Part 4
- Question** » How might this proposal impact owners and occupiers within the affected area?
- » If a new development approval or environmental authority is issued (by council or the State), how might the continuation of an existing urban encroachment registration, without consultation of the approved change to that registration, affect owners and occupiers within an affected area?
- » For industry, would the proposed changes to the urban encroachment processes likely ease financial and resourcing burdens of maintaining a registration and provide opportunities to improve your business?
- » For industry, do these proposed changes make urban encroachment registrations more user friendly and enticing?



## Add a minimum period for public consultation for urban encroachment applications (new or changed)

The current urban encroachment provisions do not specify a minimum period for public consultation.

The proposed changes will require an owner of the registered premises to consult with property owners and occupiers within the proposed 'affected area' for a minimum of 15 business days prior to lodging an application for a new urban encroachment registration or change to an existing registration.

This timeframe is aligned with the existing public consultation requirements throughout the planning framework. These changes will provide consistency, clarity and certainty for businesses and the public on the process and relevant timeframes for public consultation.

### **Proposal 4    Add a minimum period for public consultation for urban encroachment applications (new or changed)**

**The change**    »    Set a minimum timeframe of 15 business days for consultation prior to any urban encroachment registration (new or changed)

**The detail**    »    Amend the Planning Regulation to require an applicant to undertake 15 business days of public consultation when applying for a new registration or applying for a change to an existing registration.

**Legislation**    »    Planning Act, Chapter 7, Part 4

# Appendix 1 - Key terms and concepts

## Development approval

A development approval is given to an application made under the Planning Act for carrying out building work, carrying out plumbing or drainage work, carrying out operational work, reconfiguring a lot (i.e. a subdivision), or making a material change of use of premises (i.e. starting a new use, re-establishing a use that has been abandoned or changing the intensity or scale of the use).

Development applications can either be code or impact assessable. Code assessable development applications are assessed by the local council against pre-approved planning requirements and are not publicly consulted. Impact assessable development applications are assessed at both the local and state government levels, are subject to public consultation, and provide submitted with appeal rights.

## Environmental authority

An environmental authority is applied for by an organisation for approval to undertake an environmentally relevant activity. Environmentally relevant activities can include industrial, resource or intensive agricultural activities with the potential to release contaminants into the environment.

Environmental authorities are assessed by the Department of Environment and Science under the *Environmental Protection Act 1994*, are not publicly notified in many circumstances, and do not provide the public with appeal rights.

## Affected area

The affected area is identified by the applicant and identifies surrounding land in proximity to a registered premises, where a change to densities or development potential may encroach on the lawful operation of registered premises and increase the likelihood of civil and/or criminal proceedings in connection with complaints.

Department of State Development,  
Infrastructure, Local Government and Planning  
PO Box 15009 City East Qld 4002 Australia  
Tel 13 QGOV (13 74 68)  
[info@dsdilgp.qld.gov.au](mailto:info@dsdilgp.qld.gov.au)  
[www.statedevelopment.qld.gov.au](http://www.statedevelopment.qld.gov.au)  
Connect with us @GrowingQld

