

# Improving Queensland's planning framework – proposed amendments

Consultation paper – April 2023

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## Summary

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) is seeking your views about proposed changes to the planning framework that clarify provisions and address operational issues and inefficiencies.

The *Planning Act 2016* (Planning Act) has been in effect since 3 July 2017. In five years of operation, the planning framework under the Planning Act has been shown to be robust and very few amendments have been made during this period.

Government, industry and the community have grown their knowledge of the Planning Act and there is now a body of practical application examples in planning, development assessment and case law that has identified the need for legislative review and adjustments to be undertaken across the framework.

Consequential changes may be required to other Acts, such as the *Economic Development Act 2012*, *Integrated Resort Development Act 1987* and *Sanctuary Cove Resort Act 1985*, to achieve consistency across the broader planning framework.

## Summary of proposed changes

The suite of proposed changes contains 18 proposals across the following six topics:

- » Planning Minister's powers and processes
- » change representations and minor change definition
- » making submissions and accessing documents and notices
- » applicable event provisions
- » technical clarifications and corrections, and
- » *Planning and Environment Court Act 2016* (PECA) amendment.

An overview of each of the proposals contained in this paper, including an explanation of each, is provided in the following tables.

# Planning Minister’s powers and processes

The Planning Act establishes the Minister’s powers and limits of those powers in relation to the planning framework. The Minister’s powers are not intended to be used routinely or often, however exercising these reserve powers allows the Minister to remedy what otherwise may affect State interests and the efficient operation of the planning framework.

The Planning Act also establishes the Minister’s Guidelines and Rules which sets out the rules for plan making and other important functions such as infrastructure designation; and the Development Assessment Rules which sets out the standard assessment process for development applications. Amendments to these instruments take effect from the date prescribed in the Planning Regulation.

Proposed change	Reason for the change
<p><b>Proposal 1 Minister’s direction powers</b></p> <p>Broaden the scope of the Planning Minister’s powers to direct amendments to a local planning instrument or designation to include the ability:</p> <ul style="list-style-type: none"> <li>to issue a direction to amend a planning scheme to reflect a state interest, a change to the Planning Regulation (not just the regulated requirements), or a state government endorsed policy, without having to notify and consider submissions about taking the action</li> <li>to state the process the local government must undertake to amend the local planning scheme, enabling the local government to make the amendment without public consultation</li> <li>to issue a single direction to multiple local governments, rather than directing each local government separately.</li> </ul> <p>This change is intended to be complemented by an amendment to the Minister’s Guidelines and Rules (MGR) to simplify the process for local governments to amend a local planning instrument to reflect a change to the Planning Regulation, and a state government endorsed policy that has been subject to comprehensive public consultation. This will form part of a separate consultation process for the MGR.</p>	<ul style="list-style-type: none"> <li>Enables the Planning Minister to ensure local governments update their planning schemes in a timely and efficient manner to reflect a State interest, a matter in the Planning Regulation or a state government endorsed policy.</li> <li>Improves the clarity and certainty for the community to understand what planning controls apply to land.</li> </ul>
<p><b>Proposal 2 Making or amending the Minister’s Guidelines and Rules (MGR) – publication requirements</b></p> <p>Remove the duplicative process requirements for the Planning Minister to publish a public notice about the making or amendment of the MGR before the Planning Regulation is made.</p>	<ul style="list-style-type: none"> <li>Provides a more efficient process and removes duplication of Ministerial notification requirements.</li> </ul>
<p><b>Proposal 3 Making or amending the Development Assessment Rules (DA Rules) – publication requirements</b></p> <p>Remove the duplicative process requirement for the Planning Minister to publish a public notice about the making or amendment of the DA Rules before the Planning Regulation is made.</p>	<ul style="list-style-type: none"> <li>Provides a more efficient process and removes duplication of Ministerial notification requirements.</li> </ul>

## Change representations and minor change definition

The Planning Act enables development approvals to be changed, extended or cancelled. Providing fit-for purpose processes enables the development assessment system to deliver an open, transparent and accountable planning system.

Proposed change	Reason for the change
<p><b>Proposal 4</b> <b>Change representations assessment timeframes</b></p> <p>Provide a reasonable period (for example 20 business days, extendable by mutual agreement) for an assessment manager or responsible entity to assess change representations if the applicant does not suspend the applicant's appeal period or provides change representations at the end of the suspension period.</p>	<ul style="list-style-type: none"> <li>Provides sufficient time for the assessment manager or responsible entity to evaluate the representations and respond without necessarily exposing the applicant to additional delays, as the applicant may give a notice withdrawing the representations at any time after they are made.</li> </ul>
<p><b>Proposal 5</b> <b>Approval given by the Minister administering State Development and Public Works Organisation Act 1971 (SDPWOA)</b></p> <p>Clarify <i>Minister</i> includes the Minister administering the SDPWOA.</p>	<ul style="list-style-type: none"> <li>Enables the Minister administering the SDPWOA to be the responsible entity for a change application relating to a development approval given or changed for an application that was called in by the Minister administering the SDPWOA under a call in provision.</li> </ul>

## Making submissions and accessing documents and notices

There are many ways the community or interested parties can get involved in planning in Queensland. Maintaining modern public notification provisions ensures public notification can be carried out reliably across the state and a wide range of people can have their say.

The Planning Act also establishes the requirements for public access to documents that ensure particular planning and development assessment documents and information are publicly available.

Proposed change	Reason for the change
<p><b>Proposal 6</b> <b>Entities giving notice in newspapers</b></p> <p>Establish appropriate and achievable requirements for publishing public notices.</p> <p>Within the Planning Act, subordinate legislation and MGR:</p> <ul style="list-style-type: none"> <li>For a state government-led process, retain the requirement to publish on the Department's website, however remove the requirement to publish in a hard copy newspaper and online newspapers circulating generally in the State or part of the State.</li> <li>For a local government-led process, provide for the relevant local government to determine the most appropriate public notification method to be</li> </ul>	<ul style="list-style-type: none"> <li>Aligns with changes made to the <i>Financial Accountability Act 2009</i> in 2021 which override the Planning Act requirement for the state to publish public notices in hardcopy newspapers.</li> <li>Modernises the public notification provisions.</li> <li>Ensures public notification can be carried out reliably across the State, particularly in locations where a hard copy newspaper is no longer circulating.</li> </ul>

used instead of a hard copy newspaper, such as, publishing the notice in an online news publication servicing the affected area or on the local government’s website.

- For actions involving an applicant-led process, provide for the Minister, via the giving of a notice, to determine the most appropriate public notification method to be used.

Within the *Integrated Resort Development Act 1987* and *Sanctuary Cove Resort Act 1985*:

- For temporary closures of thoroughfares, provide that if the relevant body corporate has a website, the notice is published on that website.
- Retain provisions that require written notice given to each member of the primary thoroughfare body corporate or the principal body corporate whose lot is likely to be affected by the closure. This is proposed to be the only form of notice in the absence of a body corporate website.

**Proposal 7 Provision of electronic access in place of hard copy**

Provide modified requirements for physical access to documents that ensure planning and development assessment documents and information remain publicly accessible despite any health and safety restriction in place.

- Ensures documents remain publicly accessible.

**Proposal 8 Enabling electronic submissions**

Establish when and how submissions may be made electronically in the Planning Act.

Confirm how a person may use an alternative means of authenticating their identity in an electronic submission.

- Removes uncertainty regarding when submissions can be given electronically.
- Enables a submitter to meet the requirement of signing a submission even if it is an electronic submission.

## Applicable event provisions

An applicable event ensures the State government is able to make advance preparations or respond to emerging circumstances that affect a State interest, such as a public health emergency or a natural disaster. An applicable event is declared through a notice by the Planning Minister and powers may exist on a temporary basis. The *Economic Development Act 2012* enables applicable events declared under the Planning Act to also apply in Priority Development Areas (PDAs).

**Proposed change**

**Reason for the change**

**Proposal 9 Powers available when starting and ending an applicable event**

Improve functionality of the Planning Minister’s powers during an applicable event by enabling the Planning Minister to start or end the effect of temporary use licences (TULs) and declaring uses and classes of uses, independently of the start and end of an applicable event.

- Allow better performance of the functions under each power regarding the nature of the applicable event as it changes and evolves.

	Proposed change	Reason for the change
<b>Proposal 10</b>	<p><b>Temporary use licences</b></p> <p>Provide additional functionality regarding the use and operation of TULs:</p> <ul style="list-style-type: none"> <li>Limit the period of effect for a TUL and allow license holders to apply for an extension should the applicable event period be extended</li> <li>Clarify consultation may occur with any entity appropriate or relevant about a proposed TUL</li> <li>Allow a person to make a request to amend or cancel the effect of a TUL or any conditions imposed on a TUL</li> <li>Provide the ability to suspend or cancel a TUL if amenity or environmental impacts have occurred or are likely to occur beyond what was envisaged when the TUL was issued</li> <li>Provide the ability to suspend a TUL if non-compliance with a condition of a TUL may be occurring and cancel the TUL if non-compliance with a condition is occurring.</li> </ul> <p>Include similar provisions for PDAs where the Minister for Economic Development Queensland (MEDQ) is the relevant authority to TULs in a PDA rather than the Chief Executive.</p>	<ul style="list-style-type: none"> <li>Allow better use of TULs and additional functionality to be used on a case-by-case basis at the discretion of the Chief Executive having regard to the nature of the applicable event.</li> </ul>
<b>Proposal 11</b>	<p><b>Extending and suspending relevant periods during an applicable event</b></p> <p>Provide additional functionality for the Planning Minister to determine, for certain relevant periods, whether a suspension or extension notice applies.</p> <p>Include similar provisions for PDAs where the MEDQ is the relevant authority to extend or suspend periods.</p>	<ul style="list-style-type: none"> <li>Allows better performance of these functions about the nature of the applicable event as it changes and evolves.</li> <li>Allows certain actions that may have commenced to conclude without extension or suspension which ensures certain processes, such as public notification, can be completed in line with the community's expectations.</li> </ul>

## Technical clarifications and corrections

There is opportunity to make a series of technical and process changes that will improve processes and provide clarity within the planning framework.

	Proposed change	Reason for the change
<b>Proposal 12</b>	<p><b>Owner's consent relating to State reserves</b></p> <p>Clarify owner's consent requirements for development on State reserves where there is no trustee lease, ensuring that the interests of both the State and the trustee are protected without creating an undue administrative burden for applicants.</p>	<ul style="list-style-type: none"> <li>Removes confusion where two entities are viewed as the owner for the purposes of owner's consent.</li> <li>Reduces administrative burden for applicants.</li> </ul>



<p><b>Proposal 13</b></p>	<p><b>Infrastructure charges notice – representations</b></p> <p>Provide a reasonable period for the local government to assess and decide representations about an infrastructure charges notice (ICN) if the recipient does not suspend the recipient’s appeal period or provides representations at the end of the suspension period.</p> <p>As the local government’s consideration of the representations is focused on the ICN, a reasonable period (for example 10 business days) is proposed.</p>	<ul style="list-style-type: none"> <li>Provides sufficient time for the assessment manager or responsible entity to evaluate the representations and respond without necessarily exposing the recipient to additional delays, as the recipient may give a notice withdrawing the representations at any time after they are made.</li> </ul>
<p><b>Proposal 14</b></p>	<p><b>Building work – retaining walls</b></p> <p>Remove example in definition of building work which implies all retaining walls are building work.</p>	<ul style="list-style-type: none"> <li>Removes confusion regarding retaining walls in relation to building work.</li> </ul>
<p><b>Proposal 15</b></p>	<p><b>Enabling an aspect of development to be prohibited from being assessable development under a local categorising instrument</b></p> <p>Ensure a local categorising instrument cannot make an aspect of development assessable development if the Planning Regulation prohibits it from doing so.</p> <p>Ensure local government can continue to assess the other aspects of the development.</p>	<ul style="list-style-type: none"> <li>Enables the Planning Regulation to remove duplication in state and local government development assessment of an aspect of development and potential for inconsistent decision-making.</li> </ul>
<p><b>Proposal 16</b></p>	<p><b>Validation provision</b></p> <p>Insert a validation provision for referral agencies, in similar terms to the existing validation provision for assessment managers, refining arrangements around considering instruments coming into effect after a development application is made but before it is determined.</p>	<ul style="list-style-type: none"> <li>Provides certainty in the process followed by referral agencies.</li> </ul>
<p><b>Proposal 17</b></p>	<p><b>Temporary development and head of power</b></p> <p>Ensure the Planning Regulation can declare development to be temporary and specify a timeframe of development after which development rights are not continued.</p>	<ul style="list-style-type: none"> <li>Ensures that developments which are intended to be temporary or fulfill an interim need, are limited to being temporary.</li> </ul>

## Amendment to the *Planning and Environment Court Act 2016 (PECA)*

There is opportunity to make a legislative change that will improve processes and provide clarity within the Planning and Environment Court (PEC).

	<b>Proposed change</b>	<b>Reason for the change</b>
<p><b>Proposal 18</b></p>	<p><b>Burden of proof for submitter appeals</b></p> <p>Clarify that the applicant bears the onus of proof in a submitter appeal for a change application.</p>	<ul style="list-style-type: none"> <li>Ensures the dispute resolution system can operate effectively.</li> </ul>

## How to have your say

We want to hear what you think of the proposals. Your feedback will help us to shape the changes we make to the planning framework.

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 contact [BestPlanning@dsdilgp.qld.gov.au](mailto:BestPlanning@dsdilgp.qld.gov.au).



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