

Minister's Direction Power

This fact sheet provides an overview of the new Minister's direction power under the Housing Availability and Affordability (Planning and Other Legislation Amendment) Bill 2023.

Why is a new Minister's direction power proposed?

The amendment of local government planning schemes is largely driven by local governments. In most cases local governments amend their planning scheme to reflect changes to the Planning Regulation and matters of state interest. However, inconsistency between instruments can create confusion about planning controls that apply to land.

The process in which a local government uses to amend a planning scheme is either under s18 of the Planning Act, or as set by the Minister's Guidelines and Rules.

Currently, the Minister's Guidelines and Rules allows a local government to make an administrative or minor amendment to their planning scheme to reflect the regulated requirements (such as a land use and administrative definitions). However, there are other parts of the Planning Regulation which also override a planning scheme, for example, development that should be accepted development and not require planning approval. If a planning scheme does not align with these provisions, the community may not know if a development application is required with any certainty. However, under the Minister's Guidelines and Rules, even though the Planning Regulation overrides the planning scheme, a local government must undertake a major amendment process, which requires public consultation.

Similarly, where a planning scheme does not reflect a state interest, an applicant may need to refer to multiple planning instruments to know which planning controls apply. In these situations a local government is required to undertake a major amendment process, requiring public consultation, which can take considerable time. This is reasonable as it allows the community to have their say about changes that may affect them.

However, if the State has undertaken adequate public consultation on a matter of state interest which can be contextualised at the local level, then further consultation may not be necessary. Adequate consultation could include community level consultation where it is clear what an amendment to the planning scheme would be and how the community would be affected. An example may be where there has been State-led master planning involving local consultation that identifies development processes and outcomes for a particular area.

Key features

- Enables the Planning Minister to direct a local government to amend its planning scheme without first giving notice.
- Is limited to circumstances when a matter in the Planning Regulation overrides a planning scheme or there has been adequate public consultation about a matter of state interest.
- Is supported by proposed amendments to the Minister's Guidelines and Rules.

What is the proposed new Minister's direction power?

The Minister has powers under the Planning Act to direct a local government to amend a local planning instrument to be consistent with the regulated requirements or to protect or give effect to a matter of state interest. The Bill complements this existing power by enabling the Minister to direct a local government to amend a planning scheme, without first giving notice, to reflect matters in the Planning Regulation which it must be consistent with or matters of state interest which have undergone adequate public consultation. Local Governments must then make an amendment under the Minister's Guidelines and Rules.

Given the matters in the Planning Regulation already override the planning scheme, removing the notice requirement enables an amendment to occur in a timely and logical way.

Similarly, where a matter of state interest has undergone adequate consultation, the new process enables a more efficient amendment. In these circumstances, for the Minister to be satisfied that adequate consultation has been undertaken, consideration would be given to the extent of consultation with the local community and the level of detail provided in that consultation. The local government may then, under new provisions in the Minister's Guidelines and Rules make a minor amendment to the planning scheme.



If the criteria under the proposed new section are not met, the usual process under s26 of the Planning Act would apply.

How is the Minister's Guidelines and Rules being amended to simplify making a planning scheme amendment?

It is proposed the Minister's Guidelines and Rules be amended to enable local governments to make a minor amendment to their planning scheme to reflect a matter in the Planning Regulation in which it must be consistent or is in response to the Minister's direction under the proposed new section 26A of the Planning Act.

This will simplify the process and shorten the timeframe for local governments to amend their planning schemes.

Proposed amendments ¹	
Planning Act	<p>The Bill updates the direction powers for local planning instruments to allow the Planning Minister to direct a local government to amend their planning scheme, without first giving notice to the local government. These powers are limited to instances in which the Minister considers the planning scheme should be amended to:</p> <ul style="list-style-type: none"> • reflect a state interest that has been the subject of adequate public consultation, or • be consistent with a matter in the Planning Regulation including a regulated requirement; a regulation made under section 43(1) or 44(5) to the extent the regulation categorises development as prohibited or accepted development; or (iii) a regulation made under section 43(5)(b) or (c) – note this relates to development categorised as accepted or prohibited; that cannot be made assessable development, or an (or part of an) assessment benchmark. <p>In these instances, the Minister can direct a local government to amend its planning scheme by giving notice of the nature of the amendment, the reasons for it, and a reasonable time period in which it must be undertaken. The local government is required to amend their scheme under the Minister's Guidelines and Rules.</p> <p>If the local government does not make the amendment as directed, the Minister may make the amendment and recover any associated expenses.</p>
Planning Regulation	<p>A consequential amendment to the Planning Regulation will ensure notices given under this power are available for inspection.</p>
Minister's Guidelines and Rules²	<p>The Minister's Guidelines and Rules are proposed to be amended to enable a local government to make a minor amendment to their planning scheme, if they are satisfied the amendment:</p> <ul style="list-style-type: none"> • is consistent with the regulated requirements, development categorised as accepted or prohibited, development that cannot be assessable, or an (or part of an) assessment benchmark under the Planning Regulation, or • reflects changes in response to a Ministerial Direction given under new section 26A, Chapter 2, Part 3, Division 3 of the Planning Act.

Further information

For further information please contact the Department of State Development, Infrastructure, Local Government and Planning via planning4housing@dasilgp.qld.gov.au.

¹ The table below provides indication of the nature of the amendments.

² Minister's Guidelines and Rules will be subject to the standard, statutory consultation requirements.