



ShapingSEQ: SEQ regulatory provision guideline



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1. Introduction

Statutory regional planning in South East Queensland (SEQ) has been accompanied by regulatory provisions since October 2004.

Regulation plays a critical role in ensuring *ShapingSEQ* policy is delivered through development assessment.

For the previous SEQ regional plans, this regulation was delivered through regional plan regulatory provisions in 2005, and a state planning instrument known as State Planning Regulatory Provisions (SPRP) in 2009.

A draft *ShapingSEQ* SPRP, which accompanied the draft version of *ShapingSEQ* regional plan, was released for public consultation from 20 October 2016 to 3 March 2017. With the commencement of the *Planning Act 2016* on 3 July 2017, SPRPs were repealed and their regulatory provisions transitioned into the Planning Regulation 2017.

The Planning Regulation 2017 now contains the regulatory provisions for *ShapingSEQ*. These regulatory provisions have been included following refinement, as a result of considering all properly made submissions received on the draft *ShapingSEQ* SPRP. This document provides a guide to these SEQ regulatory provisions¹, as prescribed in the Planning Regulation 2017 for assessment for SEQ regional plan matters.

2. Purpose of the SEQ regulatory provisions

The SEQ regulatory provisions ensure that land use planning and development throughout the region support *ShapingSEQ*'s desired regional growth pattern, goals, elements and strategies.

The SEQ regulatory provisions apply to the following areas in the region:

- Regional Landscape and Rural Production Area
- Rural Living Area
- SEQ development areas.

The SEQ regulatory provisions are used in the development assessment process, and also in preparing or amending a local government planning instrument such as a planning scheme; in particular, ensuring levels of assessment are aligned.

They define a range of exemptions, thresholds that trigger further assessment, and matters that are to be assessed, and identify particular development that is prohibited. Table 1 shows development that the SEQ regulatory provisions may apply to, in each of the regional land use categories in SEQ.

	Material change of use	Reconfiguring a lot	Operational work	Building work
Regional Landscape and Rural Production Area	✓	✓	✗	✗
Rural Living Area	✓	✗	✗	✗
SEQ development area	✓	✓	✗	✗
Urban Footprint (outside an SEQ development area)	✗	✗	✗	✗

Table 1: Development to which the SEQ regulatory provisions may apply.

¹ This chapter provides guidance on the SEQ regulatory provisions, including their rationale. If the Planning Regulation 2017 is amended, this guidance may become outdated and should not be relied upon in interpreting the Planning Regulation 2017 to the extent that it is inconsistent with the amendments.

3. Regional Landscape and Rural Production Area

Regulating certain development in the Regional Landscape and Rural Production Area (RLRPA) is central to advancing the strategies of *ShapingSEQ* for good land management, and the long-term preservation of natural assets and regional landscape values which are vital for SEQ's sustainability, livability and prosperity.

There are many values found in the RLRPA such as productive rural land, the regional biodiversity network including habitat linkages, scenic amenity, and the region's water catchments.

The regulatory provisions prevent urban and rural residential sprawl in the RLRPA and manages other activity, including subdivision, to protect these values. The regulation also serves to protect areas that might be required for accommodating future urban growth beyond the planning horizon of *ShapingSEQ*.

Importantly, the regulatory provisions provide for a range of activity that is essential for strong rural communities, rural economic growth and diversification, and natural resource management.

For a further description of the RLRPA, and why it is important to manage and protect this area, see *ShapingSEQ*, chapter 3 – part B; and the *ShapingSEQ Background paper 4: Sustain*.

Further detail on the types of activity the regulatory provisions apply to, is provided in section 7.

4. Rural Living Area

ShapingSEQ supports a range of housing and lifestyle options, including new rural residential development. However, given the historic impacts on the region from this form of development and *ShapingSEQ*'s intent for the efficient use of land, consolidated growth and protection of natural and rural values, *ShapingSEQ* only supports new rural residential development in the Rural Living Area (RLA).

The SEQ regulatory provisions apply to the RLA in a similar manner to the RLRPA, except where reconfiguring a lot.

It is the responsibility of local government, in its planning and development assessment, to determine the suitability of rural residential lot size and its configuration in the RLA.

For a further description of the RLA, and why it is necessary in SEQ, see chapter 3 – part B, and the *ShapingSEQ Background paper 1: Grow*.

Further detail on the types of activity the regulatory provisions apply to are provided in section 7.

5. SEQ development areas

For the purposes of the SEQ regulatory provisions, an SEQ development area means an area in the SEQ region identified in a gazette notice by the Minister for Planning as a major development area (MDA).

An MDA is a large proposed growth area requiring coordinated land use and infrastructure planning, in addition to significant state infrastructure investment for its urban development.

In *ShapingSEQ*, Beerwah East is the only MDA and is located in the Urban Footprint. However, additional MDAs may be designated by the Minister for Planning in the future, if necessary, to address land supply issues identified by the SEQ Growth Monitoring Program.

The SEQ regulatory provisions apply to development areas to limit further development, including subdivision, to prevent premature or ad-hoc development compromising the area before its future planning intent has been established.

6. Where the SEQ regulatory provisions are found

The sections of the Planning Regulation 2017 relevant to the SEQ regulatory provisions can be found in:

- **Schedule 10, parts 15 and 16** for the types of development the SEQ regulatory provisions will apply to, prescribed development thresholds, matters that are assessed, application fees and the type of development requiring referral agency assessment.
- **Schedule 24** for a dictionary.

To determine how these provisions are applicable, it is recommended that parts 15 and 16 of schedule 10 be reviewed to determine if a particular proposal is assessable, whether referral agency assessment is required and the matters that are to be assessed. Schedule 24 can be used to assist interpretation where needed.

7. Application of the SEQ regulatory provisions

The following section provides a summary guide for the application of the SEQ regulatory provisions. Development may be:

- exempt from the SEQ regulatory provisions
- assessable development
- prohibited development.

7.1 Development that is exempt from the SEQ regulatory provisions

The SEQ regulatory provisions exempt a range of activities. Despite these exemptions, the proposed activities may be regulated by the state or local government under other parts of the Planning Regulation 2017, other planning instruments or legislation.

a) Generally

The SEQ regulatory provisions provide for a number of general exemptions from schedule 10, parts 15 and 16, including for example, development:

- that is stated in the Planning Regulation 2017, schedule 6
- where it is proposed in an 'urban zone' in a planning scheme outside the Urban Footprint (urban zone is defined by the Planning Regulation 2017)
- that is regulated under certain other items of legislation, such as, a coordinated project or state development area under the *State Development and Public Works Organisation Act 1971*
- that is generally in accordance with a rezoning approval given under a repealed Act and conferred in a development permit or a planning scheme
- on a lot in an SEQ rural enterprise precinct² where the development is consistent with a rural enterprise precinct plan approved by the planning Minister
- that is carried out under an existing development permit.

A full list of the exemptions is provided in schedule 24 of the Planning Regulation 2017 under 'excluded development'.

² For more information regarding rural enterprise precincts please see the *ShapingSEQ: Rural precinct guideline*.

b) A material change of use in the RLRPA or RLA

The SEQ regulatory provisions include exemptions for a range of different types of material change of use in the RLRPA or RLA, including for example:

- a dwelling
- a dual occupancy (where owned by the same person or entity on one land title)
- rural activities or an associated primary industry activity
- activities such as energy production and transmission, telecommunication, emergency services and utilities
- development that is consistent with an existing development approval if it was assessed by a referral agency against schedule 10, part 16.

A full list of the exemptions for a material change of use for part 16 is provided in schedule 24 of the Planning Regulation 2017 under 'exempt material change of use'.

Many other activities may be supported in the RLRPA or RLA, but these are considered assessable, as opposed to exempt. More information on what development is assessable is provided in section 7.2.

c) Reconfiguring a lot in the RLRPA

The SEQ regulatory provisions include exemptions for reconfiguring a lot including for example, where:

- amalgamating, or rearranging a boundary of lot, or where no new additional lots are created
- the lot sizes are no less than 100 hectares
- the lot sizes are consistent with a gazetted rural subdivision precinct³
- it provides for an access easement to give access to a constructed road
- it creates one lot into two using an existing gazetted local road or state road infrastructure as the boundary
- one new lot is created for essential community service such as energy production/transmission, telecommunications, emergency services, and utilities
- it facilitates a development approval that expressly contemplated the reconfiguring a lot as necessary and was triggered for referral agency assessment under the SEQ regulatory provisions.

A full list of the exemptions for reconfiguring a lot for part 16 is provided in schedule 24 of the Planning Regulation 2017 under 'exempt subdivision'.

Any proposal for reconfiguring a lot that is not exempt is prohibited development in the RLRPA.

7.2 Assessable development**a) A material change of use in the RLRPA or RLA**

If a proposed material change of use in the RLRPA or RLA is not exempt under the SEQ regulatory provisions, it may be assessable development or prohibited development (see section 7.3).

Examples of development that is assessable include a material change of use for tourist activity, sport and recreation activity, community activity, indoor recreation activity, and types of urban activity.

Schedule 10, part 16 provides the thresholds and matters to be assessed for these activities.

³ For more information regarding rural subdivision precincts please see the *ShapingSEQ: Rural precinct guideline*.

Development thresholds are put in place to regulate the scale and/or intensity of an activity. For instance, small-to-medium-scale activity may be supported outside the Urban Footprint and may not be subject to the SEQ regulatory provisions. Development that exceeds a relevant development threshold may also be supported, but this will be subject to assessment against particular criteria e.g. the impacts of the development on the site and the surrounding area.

In these instances, the development proposal would also be referred to the state government for its assessment to ensure the proposal is not in conflict with the intent of *ShapingSEQ* and the assessment is being carried out consistently throughout the region.

Matters that are assessed also vary. Where a proposed urban activity, for instance, exceeds the development threshold it will be subject to a more rigorous test. This test is required to:

- determine its suitability based on whether or not there is a need for it in the public interest, and
- ensure its locational requirements necessitate it being located outside the Urban Footprint.

This is commonly referred to as the ‘overriding needs test’, which plays a critical role in maintaining the integrity of the regional plan strategy seeking a consolidated urban settlement.

It is important to note that such an assessment under the regulation is carried out for a defined use(s), at a particular location, at a point in time.

The fact that a proposal has been able to demonstrate an overriding need in the public interest to establish a use, is no guarantee that this approved use will be able to demonstrate an overriding need to expand or diversify, nor that a similar use could establish overriding need nearby.

b) A material change of use or reconfiguring a lot in a SEQ development area

Development areas are locations for new urban growth gazetted by the Minister for Planning. These locations require coordinated land use and infrastructure planning and must be protected from ad-hoc land uses that may prejudice the development potential of this land.

To ensure that future development in these locations is not compromised, the SEQ regulatory provisions apply to both material change of use and reconfiguring a lot applications in these locations.

Exemptions and thresholds for the assessment of development areas remain similar from the repealed SPRP provisions. Development that is assessable in these locations must be consistent with the future planning intent for that location.

Future planning intent may be established through a major planning scheme amendment to incorporate a structure plan for the area.

If no structure plan has been developed, a set of assessment criteria is contained in the regulation to ensure an application supports the goals, elements and strategies in *ShapingSEQ*, as well as any specific intent stated in the regional plan or in a gazette notice, does not adversely affect infrastructure sequencing, is compatible with other land uses and considers the impacts of natural hazards.

7.3 Prohibited development

The SEQ regulatory provisions prohibit certain types of development in SEQ.

a) A material change of use in the RLRPA or RLA is prohibited where it is:

- a residential activity in the RLRPA or RLA that is not exempt
- a shopping centre in the RLRPA or RLA
- a residential care facility greater than 5,000m².

Under the 2009 SEQ Regional Plan SPRP, residential development (other than that which was exempt) and shopping centres could not establish an overriding need in the public interest. This was done to ensure this type of development could not occur outside the Urban Footprint. The SEQ regulatory provisions carry over this intent by identifying these activities as prohibited development outside the Urban Footprint.

Residential care facilities have been included as a special type of community activity to ensure that new models of living and services can be accommodated more effectively in SEQ to service an aging population. It is recognised that this activity has permanent living arrangements, so size limitations apply where it is proposed outside of the Urban Footprint.

b) Reconfiguring a lot in the RLRPA

Unless a proposal for reconfiguring a lot is exempt, it is prohibited development in the RLRPA.

Limitations on reconfiguring a lot have been in place since draft Regional Plan provisions took effect in 2004. These restrictions have proven successful in limiting rural fragmentation and supporting long-term rural production and are continued in the current SEQ regulatory provisions.

There is no support for a performance based solution on a lot by lot basis. The consideration of individual constraints and opportunities has occurred through mapping decisions that have set the regional growth pattern.

8. Further information

Further information regarding the SEQ regulatory provisions or *ShapingSEQ* can be found at www.dilgp.qld.gov.au/shaping-seq

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