

## PROPOSAL TO MAKE AN ALIGNMENT AMENDMENT TO A LOCAL PLANNING INSTRUMENT

**Objective Reference:** A2274697  
Reports and Attachments (Archives)

**Attachment:** [Alignment Amendment Rules](#)



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### PURPOSE

This report seeks Council's approval to make an alignment amendment to the draft Redland City Plan in accordance with the alignment amendment rules made under Section 293 of the *Planning Act 2016*.

### BACKGROUND

The new *Planning Act 2016*, which will replace the *Sustainable Planning Act 2009*, was assented to by the State government on 25 May 2016 and will come into force on 3 July 2017.

Council at its meeting of 28 February 2017, resolved to proceed with the amended planning scheme (the draft Redland City Plan) and submit it to the Department of Infrastructure, Local Government and Planning to seek approval from the Minister to adopt the scheme. Prior to the Redland City Plan commencing, Council must finalise the Local Government Infrastructure Plan and planning scheme policies, which will form part of the Redland City Plan.

### ISSUES

Upon commencement of the Redland City Plan, the new *Planning Act 2016* will be in force. This Act includes changes to some terminology, process and decision-making rules for development assessment that has an effect on the content of the planning scheme. In this regard, the Act allows a Council to make amendments to its planning scheme to *align* with the new Planning Act, and prescribes "alignment amendment rules" that outline the process for doing so.

**Attachment 1** is a copy of the “alignment amendment rules”. These rules outline the scope of this type of amendment and include reformatting or revising the structure of the planning scheme to improve its clarity or operation, including removing or altering certain sections of a Queensland Planning Provisions (QPP) - compliant planning scheme which may be redundant, and replacing terminology or language from repealed legislation with terminology consistent with the Act, including but not limited to names of categories of development or categories of assessment and content for the regulated requirements in the *Planning Regulation 2017*.

Importantly, this type of amendment cannot change a matter of State interest, a policy position, a category of assessment, or an entity’s development rights under the local planning instrument, nor have widespread public interest.

While the draft Redland City Plan has been drafted to be mindful of the new *Planning Act* there may be aspects that require amendment to ensure functional operation under the new *Planning Act*. Of particular note, the new decision rules for assessing code assessable development applications make this type of assessment bounded to the codes only, without the ability to refer to the Strategic Framework or a sufficient grounds test. The alignment amendment process will investigate whether the assessment codes in the Redland City Plan are sufficiently self-contained to allow code assessment to occur in this way.

As the draft Redland City Plan is currently with the State government for review and seeking approval to commence, Council intends to submit an “aligned” version of the draft Redland City Plan (i.e. a version that includes the alignment amendment) to the State, requesting that this version be the version approved for commencement. This is allowable under Section 286 of the *Planning Act*, subject to the agreement of the Minister.

## **STRATEGIC IMPLICATIONS**

### **Legislative Requirements**

Under the alignment amendment rules, Council must:

- 1) Decide to make the alignment amendment;
- 2) Prepare and make the alignment amendment;
- 3) Commence the alignment amendment upon or after commencement of the Act;
- 4) Publish a public notice about the alignment amendment; and
- 5) Provide a copy of the public notice and the alignment amendment to the State government.

This report seeks Council’s resolution on above items 1, 2 and 3.

The alignment amendment process does not require public notification or State government review.

### **Risk Management**

The Planning Act includes new concepts and terminology to support changes from the SPA (e.g. to the names of categories of assessment). While chapter 8 of the Planning Act provides for the legal transition of instruments and terminology, it is preferable to amend the local planning instrument to ensure a seamless transition and ease of interpretation of the new terminology with commencement of City Plan under the Planning Act.

Should Council choose not to make an alignment amendment at this stage, there may be some workability issues with the Redland City Plan upon commencement of the new Planning Act.

### **Financial**

The Department of Infrastructure, Local Government and Planning will fund preparation of the alignment amendment from the Planning Reform budget. No additional budget is required from Council to prepare and finalise the alignment amendment.

### **People**

The process will be assisted by a consultant appointed by the State Government to assist local government with the alignment amendment process. All costs for this consultant are borne by the State government.

### **Environmental**

Nil.

### **Social**

Nil

### **Alignment with Council's Policy and Plans**

The proposal is consistent with Council's Corporate Plan 2015-2020:

Wise Planning and Design 5.1: Growth and development in the city is sustainably managed through the adoption and implementation of the Redland City Plan and Local Government Infrastructure Plan.

The proposal is consistent with Council's Operational Plan 2016-2017:

Wise Planning and Design 5.1.3: Finalise the Redland City Plan.

### **CONSULTATION**

City Planning and Assessment Group.

### **OPTIONS**

1. That Council, under the alignment amendment rules, decides to:
  - a) propose to make an alignment amendment;
  - b) make the alignment amendment; and
  - c) commence the alignment amendment upon or after commencement of the Act.
2. That Council, under the alignment amendment rules, decides to propose to make an alignment amendment.
3. That Council resolves not to propose to make an alignment amendment.

## **OFFICER'S RECOMMENDATION**

That Council resolves as follows:

1. That Council, under the alignment amendment rules, decides to:
  - a) propose to make an alignment amendment;
  - b) make the alignment amendment; and
  - c) commence the alignment amendment upon or after commencement of the Act.
2. That report and attachment remain Confidential until such time as Council receives approval from the Planning Minister for adoption of the City Plan.

# Alignment amendment rules

Minister's rules under section 293 of the *Planning Act 2016*

MINISTER'S  
RULES

Version 01

Made 25 November 2016

This document is a statutory instrument made under the *Planning Act 2016* (the Act)<sup>1</sup>, and given effect by the Minister publishing a gazette notice.

It sets out **rules**<sup>2</sup> that must be followed for making amendments of a type stated in schedule 1 (***alignment amendment***) to local planning instruments<sup>3</sup>.

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<sup>1</sup> Section 17 of the *Acts Interpretation Act 1954* provides the power to make and use a statutory instrument between enactment and commencement of the Act.

<sup>2</sup> Section 293(1) of the Act provides for the Minister to make rules about making amendments to a local planning instrument that are of a type the Minister is satisfied:

- (a) are consistent with the Act; and
- (b) do not substantially change the effect of the instrument.

<sup>3</sup> Section 8(3) of the Act defines a local planning instrument as a planning instrument made by a local government and as either a planning scheme, planning scheme policy or temporary local planning instrument.



# Minister's rules for an alignment amendment to a local planning instrument

## 1. What these rules apply to

1.1. These rules apply to an alignment amendment of a local planning instrument.

## 2. Propose to make an alignment amendment

2.1. The local government must **decide**<sup>4</sup> to propose to make an alignment amendment under these rules to a local planning instrument.

## 3. Make<sup>5</sup> the amendment

3.1. After preparing the proposed alignment amendment, the local government must decide to:

- (a) make the alignment amendment; and
- (b) commence the alignment amendment upon or after commencement of the Act.

3.2. After making the alignment amendment, the local government must publish, as soon as practical, a public notice about the alignment amendment.

3.3. The public notice must state the following:

- (a) the name of the local government;
- (b) the title of the alignment amendment;
- (c) the purpose and general effect of the alignment amendment;
- (d) the date the alignment amendment was made;
- (e) the commencement date for the alignment amendment<sup>6</sup>; and
- (f) where a copy of the alignment amendment may be inspected and purchased.

3.4. The local government must, as soon as possible after publishing a public notice under section 3.2, give the chief executive:

- (a) a copy of the public notice;
- (b) a copy of the alignment amendment; and
- (c) a copy of the amended instrument, if requested by the chief executive.

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<sup>4</sup> The local government's decision at step 2.1 may also cover and include the local government's decision to make the alignment amendment at step 3.1.

<sup>5</sup> 'Make' within these rules refers to the local government finalising the amendment and it having effect.

<sup>6</sup> While an alignment amendment may be made prior to the Act commencing, an alignment amendment cannot commence until the Act commences.

## Schedule 1 – Scope of amendments made under these rules

1. Amendments to which these rules apply are limited to amendments where the effect of the local planning instrument is not substantially changed as a result, including the circumstances below:
  - (a) improving and clarifying assessment benchmarks, notably codes, to ensure they are sufficiently robust to permit assessment as required by the decision rules for code assessment under the Act, and taking into account matters referred to in section 43(2) of the Act;
  - (b) reformatting or revising the structure of the local planning instrument to improve its clarity or operation, including but not limited to removing or altering certain sections of a QPP-compliant planning scheme which may be redundant;
  - (c) replacing terminology or language from repealed or soon-to-be-repealed legislation<sup>7</sup> with terminology consistent with the Act, including but not limited to names of categories of development or categories of assessment and content for the regulated requirements in the *Planning Regulation 2017*; or
  - (d) changes of form not involving substantial changes of substance.
  
2. An amendment to which these rules apply does not include<sup>8</sup>:
  - (a) a change to a matter of State interest;
  - (b) a substantial change to a policy position as currently expressed in the instrument;
  - (c) a substantial change to a category of development or category of assessment for a particular use or activity;
  - (d) a change, other than a change that is in the opinion of the local government minor or inconsequential, to a person's or entity's development rights under the instrument; or
  - (e) a change which, in the opinion of the local government, would be likely to result in widespread public interest in the local government area and / or in multiple public submissions.

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<sup>7</sup> Specifically, *Integrated Planning Act 1997* (IPA) and *Sustainable Planning Act 2009* (SPA).

<sup>8</sup> An amendment that is not an alignment amendment follows the processes, rules or guidelines as set out in the *Statutory guideline for making and amending local planning instruments* made under SPA or the *Minister's Guidelines and Rules* (currently interim) made under the Act, whichever is relevant at the time.

## Schedule 2 – Definitions and abbreviations

<b>DEFINITIONS</b>	
<b><i>Decide</i></b>	<p>means a local government making a decision in relation to certain matters before proceeding to the next action under this instrument</p> <p>Editor's note – a local government may delegate its power to amend its planning scheme under the <i>Sustainable Planning Act 2009</i> or <i>Planning Act 2016</i> in accordance with section 257 of the <i>Local Government Act 2009</i> and section 238 of the <i>City of Brisbane Act 2010</i>, other than where a decision is required to be made by resolution in accordance with an Act.</p>
<b><i>Public notice</i></b>	<p>means a notice published—</p> <ul style="list-style-type: none"> <li>(i) in the gazette; and</li> <li>(ii) in a newspaper circulating in the local government's area; and</li> <li>(iii) on the local government's website</li> </ul>
<b><i>QPP planning scheme</i></b>	<p>being a planning scheme that complies with the Queensland Planning Provisions</p>

<b>ABBREVIATIONS</b>	
IPA	<i>Integrated Planning Act 1997</i>
SPA	<i>Sustainable Planning Act 2009</i>
The Act	<i>Planning Act 2016</i>