

Transitional arrangements

State development areas | Advisory note

This advisory note provides information on the transitional arrangements that come into effect following adoption of the first development scheme for a State development area (SDA).

Adoption of a development scheme

As soon as practicable after the declaration of an SDA the Coordinator-General is required, in accordance with section 79 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act), to prepare a draft development scheme. The draft development scheme is provided to the Governor in Council for approval.

If approved by the Governor in Council, a development scheme in an SDA takes over planning and development assessment from local and State government planning instruments and regulates the development that is identified by the development scheme i.e. *regulated development*.

What is regulated development?

Each development scheme contains information on what development is regulated by the scheme. For those SDAs with development precincts, the precinct description (refer to section 2 of the development scheme) also includes regulated development tables which identify the types of development regulated in that precinct¹.

¹ Some development schemes have a schedule of land uses which identify the development which is regulated by that scheme.

Regulated development can be modified by “excluded development” as outlined in section 1.3.2 of most development schemes.

This section identifies specific development which, despite being identified in the precinct as regulated development, is excluded from regulation by the development scheme.

The purpose of this section is to avoid increasing regulation for development that would normally not require a development application if it occurred outside an SDA.

For example, the regulated development table may identify all uses as regulated development, but section 1.3.2 of the development scheme may state that development carried out by or on behalf of the State or public sector entity in accordance with Schedule 6 of the Planning Regulation 2017 is not regulated development under the scheme.

All SDA development schemes currently regulate material changes of use (MCU). In addition, some development schemes regulate other forms of development in addition to MCU, such as operational works and reconfiguring a lot.

Development schemes also contain processes for:

- change application for an SDA approval
- request to state a later currency period
- request to change an SDA application
- request for prior affected development.

A link to the SDA webpages and their development schemes is provided at www.statedevelopment.qld.gov.au/sda

Development not regulated under a development scheme

Development within an SDA not regulated by a development scheme would continue to be regulated by other legislation and planning instruments, including the *Planning Act 2016* (the Planning Act), a Council's planning scheme, or in cases where Strategic Port Land applies, under a Land Use Plan prepared in accordance with the *Transport Infrastructure Act 1994*.

Status of existing applications

Existing applications already lodged with a relevant authorised authority prior to the adoption of a development scheme can continue to be assessed by that authority if the application is for development that is not regulated development under the scheme.

However, a person must not carry out SDA assessable development without an SDA approval. Therefore, existing applications for regulated development should be withdrawn and an SDA application should be lodged for assessment by the Coordinator-General.

In addition, a person must comply with the requirements set out in the development scheme if carrying out SDA self-assessable development.

Please contact the SDA Division if there is any doubt about whether the application in question may be completely or only partially regulated by a development scheme.

Status of existing approvals

Section 85(1) and (2) of the SDPWO Act provides that where a development is being lawfully carried out prior to a development scheme applying to the land, the continued lawful operation of a use is not an offence.

These existing approvals are monitored and, if required, compliance action is undertaken by the

² As of right development is generally development for which an application was not required under the previous planning regime. This may include accepted development.

approving authority in accordance with the relevant legislation.

Existing approvals where the development authorised by the approval has not yet commenced, i.e. approvals still within the currency period for the approval, can either:

- continue through to completion if not regulated development in accordance with the newly adopted development scheme
- if regulated development either:
 - make a new SDA application for the development if making significant changes to the proposal. A link to the SDA application or request webpage is provided at www.statedevelopment.qld.gov.au/sda or
 - if the development would be substantially the same as the existing approval, apply for a prior affected development (PAD) approval from the Coordinator-General to ensure that the penalty provisions of the SDPWO Act do not apply.

What is prior affected development?

An owner of an interest in land; a landowner, easement holder, leaseholder, can make a request to the Coordinator-General to carry out PAD for land within an SDA.

A PAD for land could be one of the following:

- an alternative lawful development – a lawful as of right development² for which the owner of the land could have carried out on the land prior to the approval of the development scheme
- an approved development³ – a development with an SDA approval for the land provided under a superseded SDA development scheme
- an authorised development – a development of the land authorised under a development approval, or an instrument taken to be a development approval under the Planning Act.

Making a request to carry out PAD may enable a person to claim compensation (refer to section 89 of the SDPWO Act) for any reduction in value of an interest in land if the request is refused.

³ Only relevant where the approved development has not yet commenced, and the new development scheme would make the commencement of the approved development an offence.

Making an application for PAD

To be a properly made request, the request must:

- be made to the Coordinator-General in the approved form
- include a clear and accurate description of the land and contact details of the landowner
- identify the development which is being applied for
- include payment of the relevant fee
- include documentation that demonstrates the development was permitted prior to the development scheme coming into effect (if for an alternative lawful development), or a copy of the previous approval including conditions (if for a previous approval)
- include documentation that provides evidence of the interest in land and that the proponent is the owner of the interest
- provide sufficient information to support the PAD request.

Assessing an application for PAD

Following acknowledgement of the PAD request, which may include a request for further information, assessment will have regard to:

- the planning scheme that was in effect immediately prior to the development scheme coming into effect
- the nature of the proposed use
- the potential impacts relative to the preferred land use intents of the development scheme
- the currency period of any previous approval.

The Coordinator-General will decide the PAD request and provide notice of approval or refusal to the applicant. If approved, the Coordinator-General may also impose additional conditions on the PAD.

PAD timeline

The example provided below is of an MCU for a renewable energy facility approved with conditions by Council, still within the currency period, but for which development has not yet commenced, i.e. an authorised development.

The Governor in Council then approves a development scheme for an SDA under section 79 of the SDPWO Act. The development scheme now

overrides the planning instrument for the affected area for regulated development.

- The approval for the renewable energy facility would qualify as an authorised development, therefore, the Coordinator-General is required to authorise the use to avoid any potential non-compliance with the new development scheme.
- The proponent is required to lodge a request with the Coordinator-General to carry out a PAD for authorised development.
- The request is assessed against the relevant development scheme including the nature of the proposed development and its potential impacts on matters such as the:
 - strategic vision for the SDA
 - overall objectives for development in the SDA
 - preferred development intent for the relevant development precinct
 - SDA wide assessment criteria.
- The Coordinator-General may consult with referral entities if it is considered the request would affect that referral entity. Note, there is no public consultation applicable to the assessment process for a PAD request.
- Following assessment in accordance with section 2.1.2 of the SDA's development scheme and should the assessment conclude that the proposed development is consistent with the relevant development scheme, the Coordinator-General may provide the applicant with approval for their PAD request for authorised development for the renewable energy facility.
- Schedule 2, part 6 of the development scheme provides that the Coordinator-General may impose conditions on the approval. The assessment may take into account the previously issued conditions from Council and consider these to be adequate in protecting the Coordinator-General's interest for the authorised development.
- Should the assessment of the PAD request result in the Coordinator-General refusing the request or imposing additional conditions that may alter the existing approval, the applicant, in accordance with section 87 of the SDPWO Act, may be entitled to seek compensation from the Coordinator-General for the reduced value of the interest in land.

Contact us

For further information read the relevant development scheme at www.statedevelopment.qld.gov.au/sda or contact the Office of the Coordinator-General on 1800 001 048 or via sdainfo@coordinatorgeneral.qld.gov.au

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www.statedevelopment.qld.gov.au/sda