

Better Planning for Queensland

Planning Act 2016 / Plan Making

Fact sheet

Alignment amendment rules

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

The *Planning Act 2016* (the Act) will replace the current *Sustainable Planning Act 2009* (SPA) when it commences in mid-2017. To support the new plan making and development assessment system under the Act, the Minister has made alignment amendment rules (the rules).

Alignment amendment rules

Section 293 enables the Planning Minister to make rules about making amendments to local planning instruments (planning scheme, planning scheme policy and temporary local planning instrument) if the amendments are consistent with the Act and do not substantially change the effect of the instruments.

The rules made under this section of the Act took effect on 25 November 2016 when a notice was placed in the government gazette.

Need for alignment amendment rules

The Act includes new concepts and terminology to support changes in the Act when compared with SPA (e.g. to the names of categories of assessment). While chapter 8 of the Act provides for the legal transition of instruments and terminology, local governments may prefer to amend their local planning instruments to ensure a seamless transition to and interpretation of the new terminology.

In addition, the Act contains new rules for the assessment of code assessable applications. These new decision rules for code assessment will require decisions on development applications to be made by the assessment manager solely on the basis of the content of the codes ('assessment benchmarks'). This differs from the current rules in SPA which allow for a broader range of considerations, including whether there are 'sufficient grounds' to justify a decision which is in conflict with one or more of the criteria. These changes will result in a stronger focus on the 'robustness' of codes for the new 'bounded-assessment' approach, and ultimately provide for greater certainty for all system stakeholders. Depending on how existing (and draft) planning schemes have been drafted, there may be some risk for some local governments of unintended development outcomes where codes are not sufficiently robust.

The rules provide the process for local governments to make certain non-substantial changes (alignment amendments) to planning schemes, planning scheme policies and temporary local planning instruments to reflect the new terminology, change structure and make codes more robust and bounded for use with the new decision rules. The scope of alignment amendments does not however include changes to:

- matters of state interest;
- categories of development or assessment;
- policy positions;
- a person's or entity's development rights; or
- changes that result in widespread public interest or multiple public submissions.



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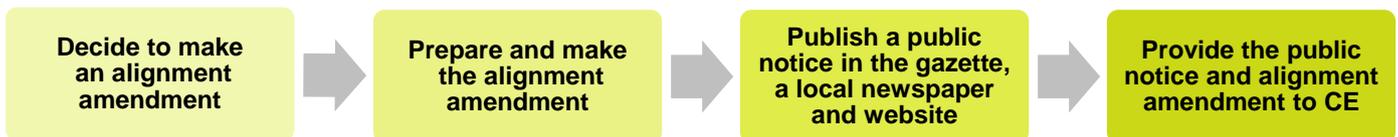
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Process for alignment amendments

An alignment amendment can be made now by a local government using the process provided in the rules. The process requires the local government firstly to decide to make an alignment amendment and secondly, to make and adopt the alignment amendment. Once the alignment amendment is made the local government must publish a notice in the government gazette, a local newspaper and on its website. The local government must also send a copy of the notice and the alignment amendment to the chief executive of the department.



Commencement of alignment amendments

Section 17 of the *Acts Interpretation Act 1954* provides for powers and functions under acts to be exercised between their enactment and commencement, with the effect of the exercise to come into effect upon commencement. As the Act has been enacted but is not due to commence until mid-2017, this provision allows for local governments to undertake alignment amendments in preparation for commencement on day one of the Act.

While a local government may use the rules now to make alignment amendments to local planning instruments, any alignment amendments cannot take effect until the Act commences. Any alignment amendments made following commencement of the Act may take effect on whatever date the local government decides.

The following diagram illustrates the range of scenarios for when a local government may make an alignment amendment and when it may commence.

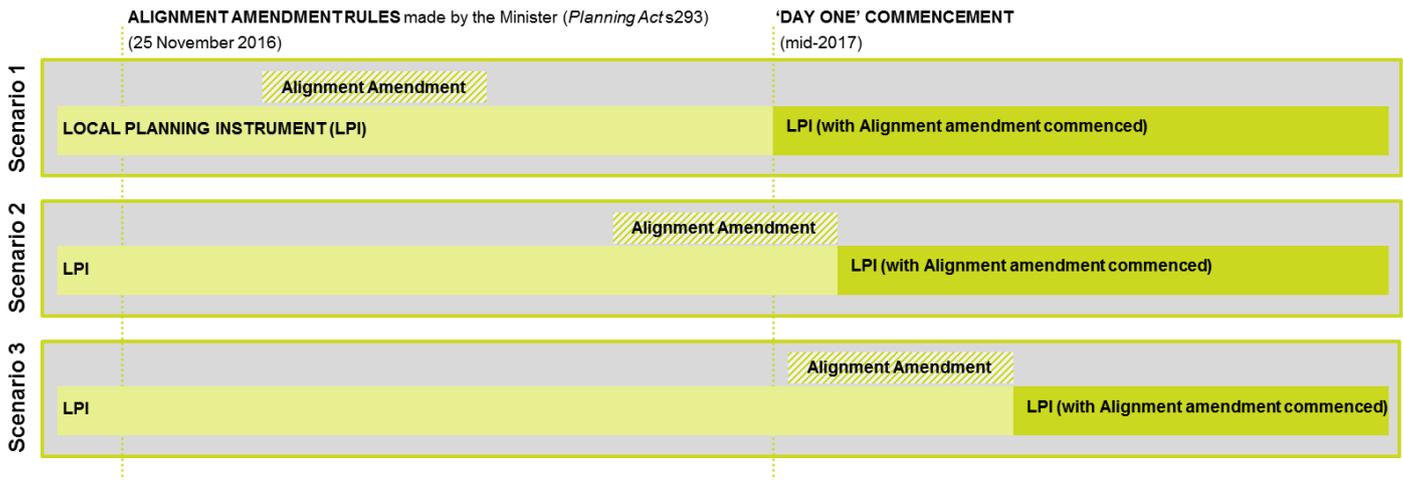


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Difference between the current process and the alignment amendment rules process

Due to the limited scope of alignment amendments, the process in the rules does not include some steps that may have been required for the same amendment if progressed under the existing process for making and amending local planning instruments as prescribed in the statutory guideline for making and amending local planning instruments (MALPI). Specifically the rules omit steps for state interest review, public notification and the Minister's approval when compared to the major amendment process.

Limitations of alignment amendments

For an amendment proposed by a local government prior to commencement of the Act, should the proposed changes not meet the scope of an alignment amendment under schedule 1 of the rules, the local government will need to use the existing process prescribed in MALPI. Alternatively, following making and commencement, the Minister's Guidelines and Rules (currently available in an interim version) will provide the equivalent process under the Act.

More information

The department is looking forward to assisting local governments to prepare alignment amendments in preparation for the Act. Information and further resources to assist local government, including wording for notices and information to share with your community, will be released shortly.

For more information contact us at bestplanning@dilgp.qld.gov.au.