



GLADSTONE
REGIONAL COUNCIL

SPECIAL MEETING AGENDA

**TO BE HELD AT THE COUNCIL CHAMBERS - CIVIC CENTRE
101 GOONDOON STREET, GLADSTONE**

On 30 July 2024

Commencing at 9.00am

**Leisa Dowling
CHIEF EXECUTIVE OFFICER**

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S/1. OFFICERS' REPORTS

S/1.1. SUBMISSION OF TEMPORARY LOCAL PLANNING INSTRUMENT UNDER S23 OF PLANNING ACT 2016 AND PART 2 OF THE MINISTERS GUIDELINES AND RULES

Responsible Officer: General Manager Customer Experience

Prepared By: Manager Development Services

Council Meeting Date: 30 July 2024

File Ref: DB2.6

Purpose:

The purpose of this report is for the Local Government consider the submission of an application to the Minister for a Temporary Local Planning Instrument and to request for an earlier effective day in accordance with the Minister's Guidelines and Rules Version 3.0.

Officer's Recommendation:

That Council resolves to:

1. Make a Temporary Local Planning Instrument 01/2024 Operational Work in Biodiversity Overlay.
2. Request the Minister's agreement that the Temporary Local Planning Instrument will be effective from 30 July 2024, as the day that council resolves to give the Temporary Local Planning Instrument to the Minister for approval, pursuant to Part 1 section 9(4) of the Planning Act 2016.
3. Authorise the Chief Executive Officer to complete all required actions in accordance with Part 3, section 23 of the Planning Act 2016 and Chapter 3, Part 2 of the Minister's Guidelines and Rules.
4. Repeal Temporary Local Planning Instrument 01/2024 upon commencement of proposed planning scheme amendment.

Summary:

The object of this temporary local planning instrument is to

- a) Ensure that Operational Work involving vegetation clearing is more clearly defined in the Biodiversity Overlay Assessment Tables;
- b) Prevent clearing of vegetation within the Biodiversity Overlay without a suitable Development Permit; and
- c) Ensure that biodiversity values are able to be considered as part of the appropriate development permit in their current form, minimising the need for rehabilitation works.

The current wording within Table 5.10.1 lacks clarity, Operational Work involving filling and excavation triggers a Code Assessable application, however 'vegetation clearing' is not expressly listed, despite those works usually involving filling and excavation. As such the propose TLPI seeks to be clear on the current OPW application trigger to include vegetation clearing and to introduce the relevant administrative definitions to support this change.

The TLPI proposes to include additional Administrative Definitions to the Scheme for 'Vegetation Clearing' and 'Exempt Vegetation Clearing' to provide further clarity and these are consistent with other Queensland Planning Scheme examples supported across the State. The 100m³ trigger for filling

and excavation has been included to prevent the unintended consequence of minor works triggering an application.

Link to Corporate Plan:

Accountable Council - We are providing good stewardship built on a foundation of trust.

Background:

As Identified through the Planning Scheme Review process, along with direct examples of emerging issues in relation to vegetation clearing in the Biodiversity Overlay, council officers have been prompted to facilitate a mechanism to provide certainty and appropriate assessment management of vegetation within the mapped areas of State Interest Biodiversity Overlay as adopted in the current Planning Scheme 2015. This can be achieved by the submission and approval from the Minister for a Temporary Local Planning Instrument (TLPI). Such an instrument, if approved by the Minister will have effect for 2 years after the effective day unless repealed earlier. As such, the TLPI would need to be replaced by an amendment to the Planning Scheme within that period.

The criteria by which a TLPI is assessed by the Minister is set out in Section 23 (1) of the Planning Act below.

23 Making or amending TLPIs

- (1) A local government may make a TLPI if the local government and Minister decide—
 - (a) there is significant risk of serious adverse cultural, economic, environmental or social conditions happening in the local government area; and
 - (b) the delay involved in using the process in sections 18 to 22 to make or amend another local planning instrument would increase the risk; and
 - (c) the making of the TLPI would not adversely affect State interests.
- (2) A local government may amend a TLPI if the Minister decides the amendment of the TLPI would not adversely affect State interests.
- (3) A TLPI may suspend or otherwise affect the operation of another local planning instrument, but does not amend or repeal the instrument.
- (4) The local government may make or amend a TLPI by following the process in the Minister's rules.
- (5) The Minister's rules must provide for—
 - (a) the Minister to approve a TLPI or amendment before the TLPI or amendment is made; and
 - (b) the local government to publish a public notice about the making of a TLPI or amendment.
- (6) The TLPI, with or without an amendment, has effect for 2 years after the effective day, or a shorter period stated in the TLPI, unless repealed sooner.
- (7) A TLPI—
 - (a) does not create a superseded planning scheme; and
 - (b) is not an adverse planning change.

Figure 1. Section 23 of the Planning Act 2017

Risk Management Summary:

In accordance with Council's Risk Management Policy, consideration has been given to the Environmental Risk if Vegetation Clearing occurs in the Biodiversity Overlay. Furthermore, reputational risk to Council has been identified as custodians of the Planning Scheme.

The table below quantifies the number of properties and area of land in Ha where the Biodiversity Overlay (adopted in 2015 Planning Scheme) is applicable and therefore at risk:-

Zone of the land	Number of properties currently impacted by the Biodiversity Overlay	Area of land – hectares impacted by the Biodiversity Overlay
Urban Expansion Zone	63	1,574
Residential <u>Low Density</u> Zone	399	78
Rural Zone	4208	686,178

Figure 2. Areas and numbers of properties with Biodiversity Overlay values.

Options and Opportunity Analysis:

The options available to Council are as follows:-

1. Progress the TLPI as proposed
2. Not progress the TLPI and reassess the risk in the future as part of a Planning Scheme Amendment.

Should Council choose to not progress the TLPI, then the risk of environmental harm via vegetation clearing in the Biodiversity Overlay increases. Furthermore, Council's reputation regarding custodianship of environmental values may be further impacted.

Stakeholder Engagement:

Stakeholder Engagement has included internal GIS team, Council's legal team, officers at the Department of Local Government Planning & Public Works.

Legal and Regulatory Implications:

The proposal for the submission of a TLPI has been supported by Council's legal team particularly in light of recent appeal matters in Agnes Water.

Financial and Resource Implications:

Minor costs will be incurred for the public notification requirements at the adoption and commencement stage. These will be covered by the Development Services budget.

Anticipated Resolution Completion Date:

It is anticipated that Council Officers will lodge the Temporary Local Planning Instrument via the State portal as soon as practicable after the Special Meeting. Following the decision of the Minister, the matter will return to a General Council meeting for adoption as set out the Part 9 of the Ministers Guidelines and Rules below.

9 Adoption

- 9.1. After completing the relevant actions under this part, the local government must decide to adopt or not to proceed with the proposed TLPI or TLPI amendment.
- 9.2. If the local government decides to adopt the proposed TLPI or TLPI amendment, the local government must publish a public notice in accordance with the requirements in the Act and as prescribed in Schedule 5.
- 9.3. The local government must, within 10 days of adopting the TLPI or TLPI amendment, give the chief executive—
 - (a) a copy of the public notice; and
 - (b) a certified copy of the TLPI as made or amended, including—
 - (i) an electronic copy of the amendment or instrument; and
 - (ii) a copy of all electronic planning scheme spatial data files (mapping), relevant to the TLPI.
- 9.4. If the local government decides not to proceed with the proposed TLPI or TLPI amendment, the local government must give the Minister a notice stating—
 - (a) the name of the local government;
 - (b) the title of the proposed TLPI or TLPI amendment;
 - (c) the decision; and
 - (d) the reasons for not proceeding with the proposed TLPI or TLPI amendment.

Figure 3. Section 9 of the Minister’s Guidelines and Rules – Version 3.0

Attachments:

1. Draft Temporary Local Planning Instrument 01/2024 - Operational Work in Biodiversity Overlay
2. CONFIDENTIAL ATTACHMENT – Correspondence Proposed Vegetation Clearing