



Queensland

Building and Other Legislation Amendment Regulation (No. 2) 2010

Explanatory Notes for SL 2010 No. 69

made under the

Building Act 1975

Sustainable Planning Act 2009

General Outline

Title

Building and Other Legislation Amendment Regulation (No. 2) 2010

Authorising law

Sections 13 and 261 of the *Building Act 1975* and section 763 of the *Sustainable Planning Act 2009* (SPA).

Policy objectives of the legislation

At the Mackay Community Cabinet Meeting on 19 March 2006, concerns were raised about the standards of temporary accommodation buildings, particularly in mining communities.

A field survey of mining camp sites in the Bowen Basin was carried out by the Department of Infrastructure and Planning (DIP) in 2007. A number of common areas of concern were identified. These include:

- travel distances to external sanitary facilities, dining areas and wash rooms are in some cases excessive. In many cases, roofed protection from the elements was not provided;
- the ratio of toilet facilities to numbers of beds varies considerably between camps and is not consistent with the requirements of the Building Code of Australia (BCA);
- wind tie-down systems are neglected and in some cases non-existent. This presents a high risk of structural failure in the event of high winds;
- fire separation and fire-safety systems are inconsistent with the provisions of the BCA. This presents potential life safety issues if a fire occurs in sleeping areas;
- excessive impact noise between sleeping quarters and walk ways;
- shading of passageways, car parking and outdoor facilities is lacking in some cases; and
- termite protection systems are inadequate in many cases are not consistent with the provisions of the BCA. Prolonged exposure to termites may affect the structural stability of some buildings.

The Building Act 1975 (BA) establishes the standards to which temporary buildings and structures must be constructed. The BA provides a building certifier with the discretion to decide what standards should apply. However, in doing so, the certifier must ensure the building or structure is structurally adequate and provides for -

- the safety of persons if there is a fire in the building or structure,
- the prevention and suppression of a fire; and
- the health and amenity of the occupants of the building or structure.

There are currently no specific building assessment provisions that relate to the construction of temporary accommodation buildings so many of the issues of concern identified during the field survey are not addressed.

The Queensland Development Code (QDC) is the parts or aspects of the parts published by the Department. Section 13 of the BA allows for the chief executive to amend the QDC by, among other things, adding another part to it.

On 23 April 2008 amendments to the BA commenced (through the *Building and Other Legislation Amendment Act 2008*) to allow for the

introduction of mandatory and specific standards of construction for new temporary buildings used for accommodation and ancillary purposes throughout the State.

How policy objectives are achieved

A new QDC part will become a building assessment provision under Section 30 of the BA. Section 30 requires building assessment work and self-assessable building work to be carried out in accordance with the building assessment provisions, including the QDC.

Section 67 of the BA requires building certifiers to apply building assessment provisions for temporary buildings or structures. The new QDC will ensure that persons providing new temporary accommodation, in specified situations, construct relevant buildings and surrounds complying with a new minimum standard.

The proposed code does not apply to existing lawful temporary accommodation buildings that have been approved for use on a site. The on-going lawful use of these buildings under an existing approval will not be affected.

A temporary accommodation building will be permitted to remain on site for a period of 24 months before it is either removed or reassessed for compliance. An applicant can apply to the local government, which will be concurrence agency pursuant to the *Sustainable Planning Regulation 2009* (SPR), for an extension of the period under the performance requirement P1 of the QDC. Where the work is self assessable, the acceptable solutions of MP3.3 must be followed in every instance as appropriate, and for A1 of MP3.3, the buildings and site must be reassessed for compliance at least once every 24 months.

Pursuant to section 13 of the BA, and after extensive consultation with key stakeholders, a new part (MP3.3) has been developed for inclusion as a mandatory part of the QDC for State-wide application.

The new part will apply where accommodation is provided in a temporary building. The proposed code details the minimum standards for structural stability, safety, health, amenity and sustainability that must be incorporated in any temporary accommodation building. In addition to MP 3.3, temporary accommodation buildings that are class 1a (and their associated class 10 buildings) will still be required to comply with parts MP 1.1 and MP1.2 (siting standards). This is to ensure appropriate siting

standards are maintained for the temporary accommodation buildings. For other classes of building, a council's town planning scheme, where relevant, will generally specify applicable siting standards. *The Building Amendment Regulation ---- 2010* will not change this.

In some cases accommodation is provided for periods of a few weeks to a few months while, for example, camps are set up, exploration drilling is carried out or site surveys are undertaken, before a camp is dismantled and moved to a new location. It would be unreasonable to apply some of the requirements of MP3.3. Many of the code requirements could also not realistically be complied with (for example covered areas and sealed surfaces).

Owners of temporary accommodation buildings advise their existing stock will not comply with all elements of MP3.3 that apply to the structure. Buildings that are currently being lawfully used will therefore be allowed to be relocated once after commencement of the new code within a period of two years. If the building is to remain on site for less than 16 weeks, there will be no requirements other than to comply with P20 of MP3.3. This means that either the existing provisions of section 67 (3) of the BA are applied by a building certifier or if the work is self assessable the buildings comply with the complementary parts of the building code for health, safety and amenity. For buildings that remain on site for a period greater than 16 weeks, the parts of MP3.3 relevant to the site works will apply to the relocation in addition to P20.

For new temporary accommodation buildings used for short term accommodation sites, a staged application of MP3.3, dependent on the intended or approved duration of use, will apply. For camps less than 6 weeks, where the buildings are assessed by a building certifier as part of an approval, the requirements of P20 of MP 3.3 will apply.-If the work is self assessable the buildings must comply with P20 of MP3.3. This means structural adequacy, fire and life safety and health and amenity requirements must be addressed, where the work is assessable or self assessable under the *Sustainable Planning Act 2009*.

For camps proposed to be in place between 6 weeks and 16 weeks, the aspects of MP3.3 that apply to the building itself are specified. For example, external covered areas and sealed surfaces will not apply but minimum bathing facilities, floor areas and insulation requirements will. Beyond 16 weeks, the elements of MP3.3 relating to the building itself and to the site apply.

Temporary accommodation buildings intended for private and domestic residential use are only required to comply with the provisions of MP3.3 relating to removal and demolition and P3 which relates to the assessment of the work against the Building Code of Australia.

Other parts of the QDC will not apply to temporary accommodation buildings. For example, MP 4.2 and MP 4.3 will not apply. Likewise, for parts of the QDC that already address accommodation standards for buildings, for example MP5.6 for pastoral workers, MP 3.3 will not apply.

To ensure residents are aware of the mandatory requirements of the code, it will be necessary for a checklist, in the approved form, to be displayed in a conspicuous location near a temporary accommodation building. The person responsible for ensuring the checklist is displayed and properly completed will be the person who allows the temporary accommodation building to be occupied.

Consistency with policy objectives of the authorising law

The proposed regulation is consistent with the policy objectives of the BA regarding the standards to be observed when carrying out building assessment work and self-assessable building work. The proposed amendments to the SPR regarding concurrence referral powers are consistent with the policy objectives of the SPA.

Alternative method of achieving the policy objective

Subordinate legislation is the preferred means of ensuring suitable standards of accommodation are provided. The current building regulations for temporary buildings generally provide for the structural, fire and life safety aspects and basic health and amenity requirements for temporary accommodation buildings at the discretion of the building certifier. However, they do not set specific requirements or require other amenities (such as dining facilities, sustainability, etc) or external infrastructure (such as pathways, roads, etc) to be addressed. Also, the extent to which the current regulations are applied is often at the discretion of the building certifier responsible for approving the work. This leads to an inconsistency in standards which was evidenced during the investigations carried out by DIP during the development of the proposed code.

DIP consulted extensively with key industry groups and the community through the release of the draft code and Regulatory Impact Statement (RIS).

The RIS addressed two main options. Business as usual (BAU) and the other is the proposed regulation. The cost-benefit analysis, which is essentially a comparison of these two options, is in chapter 10 of the RIS.

The BAU does not necessarily mean that accommodation standards would not change in the absence of the proposed regulation. For example, accommodation standards may change in response to competition for labour. However, DIP understands that other elements of the proposed regulation that would not be generally provided under BAU conditions, for example, sheltered pathways and maximum distance between sleeping quarters and dining facilities.

Information-based approaches are also not considered appropriate. This is mainly because there is no reason to believe that (a) stakeholders are not well-informed about variation in accommodation standards and options for improving accommodation standards or (b) that they would respond to better information to improving accommodation standards.

Voluntary industry codes are also not considered appropriate. This is because DIP cannot confidently recommend such an approach on account of (a) the inevitable delay in taking effective action, (b) uncertainty about effectiveness and (c) the lack of any machinery for monitoring compliance and endorsing claims of compliance with such a code.

Benefits and costs of implementing the legislation

DIP estimates the annual aggregate cost of the proposed measures at \$15 million/year. The RIS provides a qualitative account of the expected benefits. This RIS noted that it is not feasible to assign a dollar value to these benefits or to otherwise compare them directly with the costs and calculate the ratio of benefits to costs.

Consistency with fundamental legislative principles

The regulation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Extensive consultation was undertaken with government departments and key industry groups and unions during the development of the draft code. Cabinet's approval to release the RIS and draft code for public comment was given on 29 June 2009. Copies of the RIS and draft code were published on the internet. In accordance with the requirements of the *Statutory Instruments Act 1992*, notices seeking comment from interested persons were published in regional newspapers and the *Courier Mail*. A notice was also placed in the *Government Gazette*.

The RIS and draft code were pushed on the DIP and State Government web sites. An advisory newflash was sent electronically to all Local Governments in Queensland and to all major industry groups and organisations.

Selected consultation was undertaken with the Queensland Council of Unions (QCU), the Queensland Resources Council (QRC), the Australian Workers Union, representatives of the mining industry and manufacturers of transportable accommodation buildings used for temporary accommodation purposes.

Results of Consultation

21 written responses were received from the general community. There was strong general support for the proposed code.

There were no changes recommended to the enabling regulation. There were recommendations for changes to a number of the technical provisions of the new part MP3.3 of the QDC and to the application of MP3.3 under specific situations.

General comments

DIP has considered each issue, and where there are opposing views which cannot be resolved, DIP has drafted MP3.3 to take account of each view in as practical a manner as possible in the circumstances. For, example QCU prefers the approval period to be one year before re-approval is required. However, an approval limit of two years has been included in MP3.3 after feedback from building certifiers on the basis that there would not be much benefit in too short a period for the initial approval compared to the costs and difficulties involved in having yearly approvals. All proposed changes are reflected in the new code. A number of industry organisations also

raised concerns about the application of MP3.3 to their operations which involved short term temporary accommodation.

Technical changes

Suggested major changes to the technical requirements of MP3.3 relate mainly to issues raised by the unions and industry. For example, each accommodation room is required to have a covered area outside the room for use by the occupants. The consultation draft proposed a 2.1 metre wide roof. Industry has advised this is onerous and does not reflect current industry practice. It is common practice to have accommodation units facing each other and generally 3 metres apart. Where this occurs, a 1.5 metre wide roof will be permitted on each accommodation building. This provides an effective width of 3 metres. If the accommodation units are more than 3 metres apart, each unit will need a 1.8 metre wide roof.

Application of part MP3.3

A number of organisations advised that they provide temporary accommodation on a very short term basis. In some cases accommodation is provided for periods on a few weeks to a few months while, for example, camps are set up, exploration drilling is carried out or site surveys are undertaken, before a camp is dismantled and moved to a new location. It would be unreasonable to apply some of the requirements of MP3.3. Many of the code requirements could also not realistically be complied with (for example covered areas and sealed surfaces).

Following consultation with industry, for short term accommodation sites it is proposed to require a staged application of MP3.3 dependent on its duration. For camps less than 6 weeks, it is proposed that only specific parts of the code apply. Those parts will address the structural adequacy, fire and life safety and health and amenity requirements. For camps between 6 weeks and 16 weeks, the existing requirements of the BA in addition to all aspects of the proposed code that apply to the interior of an accommodation building will apply. For example, external covered areas and sealed surfaces will not apply but minimum bathing facilities, floor areas and insulation requirements will. For uses and approvals beyond 16 weeks, the whole code applies. For private domestic temporary accommodation buildings, performance requirements P1 and P3 apply.

Notes on Provisions

Clause 1 states the regulation is called the *Building Amendment and Other Legislation Regulation (No---) 2010*

Clause 2 states that Part 2, section 5 and Part 3 of the regulation commence on 1 July 2010

Clause 3 states that this part amends the *Building Regulation 2006*.

Clause 4 inserts a new section 51BK into the *Building Regulation 2006*. Section 51BK amends the QDC by adding a new part MP3.3 “Temporary Accommodation Buildings and Structures”. MP3.3 is a mandatory part of the QDC which sets standards of construction for temporary accommodation buildings and structures.

Clause 4 also provides that MP 3.3 will take effect on 1 July 2010.

Pursuant to section 30 of the *Building Act 1975*, all building assessment work and self-assessable building work must comply with the building assessment provisions. The building assessment provisions include the QDC.

For section 67 of the Act, MP3.3 is a building assessment provision which applies specifically to temporary accommodation buildings. MP3.3 does not apply to other building uses such as temporary offices, shops, warehouses, etc.

If MP3.3 is used under section 67 of the Act, the other building assessment provisions do not apply unless otherwise specified in MP 3.3. For example, the requirements of MP4.1 relevant to energy efficient lighting and water efficient toilets apply. However, the other requirements of MP 4.1 and the requirements of MP4.2 and MP4.3 of the QDC do not apply to a temporary accommodation building.

Clause 5 inserts in Part 8 of the *Building Regulation 2006*, a new division 2A “Displaying a checklist”. Division 2A only applies where a temporary accommodation building is available for occupation under a workplace agreement or in return for a rent.

Section 54A defines “code checklist” and “temporary accommodation building” for the purposes of Division 2A.

Section 54B (1) requires the checklist to be in the “approved form” (refer to section 254 of the BA).

Section 54C requires the checklist to be clearly displayed on or near a temporary accommodation building where the temporary accommodation building is available for occupation under a workplace agreement or in return for a rent. The responsibility for ensuring the checklist is properly displayed rests with the person who allows the occupation of the building.

Some large sites, such as mining sites, may have temporary buildings spread over a large area. In these cases it may be necessary for a checklist to be displayed 'near' all of them resulting in a need for more than one checklist. It is not intended that the checklist be displayed in each room containing a bed. However, it is expected that the checklist will be readily visible and accessible to all residents on a site.

The checklist is only required where the temporary accommodation building is to remain on a site for more than 42 days and where there is an employment agreement where a rent is paid.

Clause 6 amends the *Sustainable Planning Regulation 2009* by inserting a new provision which gives Local Governments referral jurisdiction to consider certain matters associated with temporary accommodation buildings.

Clause 7 amends schedule 7, Table 1 of the *Sustainable Planning Regulation 2009* by giving Local Governments concurrence referral jurisdiction to determine compliance with performance criteria 1 of MP 3.3 of the Queensland Development Code. Performance criteria 1 will permit the Local Government to allow a temporary accommodation building to remain on a site for periods greater than two years. It is expected this will only be permitted if the building work complies with MP 3.3 of the Queensland Development Code.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Infrastructure and Planning.