



Queensland

Building and Other Legislation Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 186

made under the

Building Act 1975

Plumbing and Drainage Act 2002

Sustainable Planning Act 2009

General outline

Short title

Building and Other Legislation Amendment Regulation (No. 1) 2012.

Authorising law

Sections 13 and 261 of the *Building Act 1975*

Section 145 of the *Plumbing and Drainage Act 2002*

Sections 251, 254 and 763 of the *Sustainable Planning Act 2009*

Policy objectives and the reasons for them

The policy objective of this Regulation is to introduce new building standards for the construction of buildings located in flood hazard areas.

Currently, all buildings must comply with the Building Code of Australia (BCA), which requires that a building or structure must withstand 'the combination of loads and other actions to which it may reasonably be subjected'. For buildings in flood prone areas, this will include loads and

actions caused by flood waters. To ensure a building complies with this requirement, it is generally necessary for an engineer to design the building, taking into account information about the likely characteristics of floods for the area. The BCA and associated Australian Standards currently provide no detailed guidance to assist engineers and other professionals with the design process.

The Australian Building Codes Board, which is responsible for producing and maintaining the BCA, has developed a draft national standard for the construction of buildings in flood hazard areas (the draft national standard).

The Queensland Development Code (QDC) covers building matters outside the scope of, and in addition to, the BCA. In mid-2011, Building Codes Queensland, then in the former Department of Local Government and Planning, consulted stakeholders on a proposal to adopt key aspects of the draft national standard for Queensland by introducing a new mandatory part of the QDC. As the proposal was supported, a new mandatory part of the QDC, entitled *MP 3.5 – Construction of Buildings in Flood Hazard Areas* (QDC MP 3.5) was developed.

QDC MP 3.5 adopts key aspects of the draft national standard and includes Queensland-specific measures intended to give effect to recommendations made by the Queensland Floods Commission of Inquiry. In introducing mandatory building standards for building work carried out in flood hazard areas, QDC MP 3.5 will provide detailed guidance to assist engineers and other professionals with the design process. The Government response to the Commission of Inquiry's Final Report pertaining to the construction of buildings in flood hazard areas committed to adopt QDC MP 3.5 by October 2012.

Currently, under the *Building Regulation 2006*, a local government may designate part of its area as a natural hazard management area (flood) and declare the floor level of habitable rooms. The new Regulation will allow local governments to declare additional matters relating to a flood hazard area, including the defined flood level, maximum flow velocity and the finished floor level required for class 1 buildings (houses). It will also allow local governments to declare a freeboard of a height of more than 300mm.

The Regulation will also allow the defined flood level and the maximum flow velocity declared by a local government to be varied by a building application based on a report prepared by a relevant expert or based on historical documents or information.

The Regulation also corrects a cross-referencing error in section 6 of the *Building Regulation 2006*.

Achievement of policy objectives

The Regulation will:

- adopt a new Queensland Development Code Mandatory Part 3.5 for construction of buildings in flood hazard areas
- allow a local government to set flood-related information for all or part of a flood hazard area, including the following:
 - defined flood level
 - maximum flow velocity of water
 - an inactive flow or backwater area
 - freeboard
 - finished floor level for class 1 buildings.
- confer concurrence agency jurisdiction on a local government for building work where a building development application seeks to rely on a defined flood level or a maximum flow velocity of water that is lower than the one declared by local government.

QDC 3.5 introduces new requirements aimed at ensuring that the structural integrity of residential buildings located in flood hazard areas is maintained during a flood. It also requires buildings to be protected against backflow from sanitary drains and introduces requirements to ensure utilities associated with buildings, such as switchboards, are designed or located so as to reduce the negative effects of flood water on the utilities. In addition, electrical substations that provide power for particular buildings will be protected from flood water through the requirement to locate these substations above the defined flood level.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the objectives of the *Building Act 1975*, to regulate, among other things, building development approvals and building work. Changes to the *Sustainable Planning Regulation 2009* and the *Standard Plumbing and Drainage Regulation 2003* are consistent

with the objectives of the *Sustainable Planning Act 2009* and the *Plumbing and Drainage Act 2002* respectively.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendment regulation will provide detailed guidance to assist engineers and other professionals with the design process. This could potentially lower costs as engineering advice may no longer be necessary in many cases.

Consistency with Fundamental Legislative Principles

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

Consultation

Initial consultation on QDC MP 3.5 was conducted with industry groups, the Local Government Association of Queensland, Brisbane City Council and some individual local governments and other key stakeholders in August 2011. Adoption of QDC MP 3.5 was delayed to ensure it took account of the Queensland Floods Commission of Inquiry's Final Report.

In accordance with the Government response to the Final Report, and in the context of a heightened awareness of flood risk, QDC MP 3.5 was revised to reflect the Commission's recommendations. The revised QDC MP 3.5 provides practical flexibility in its application while ensuring the property rights of owners are protected.

The revised QDC MP 3.5 was released for public consultation on 26 July 2012. Consultation closed on 7 September 2012. A copy of QDC MP 3.5 was provided to members of Building Codes Queensland's Building Industry Consultative Group. The stakeholders of the Building Industry Consultative Group include the Local Government Association of Queensland, Queensland Master Builders Association, Housing Industry Association, and the Australian Institute of Building Surveyors.

Consultation has also taken place with all members of the Building Implementation Group, which oversees implementation of recommendations in the Commission's Final Report relating to building controls and essential services, including the Department of the Premier and Cabinet and Queensland Treasury and Trade.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Regulation.

Part 2 Amendment of the Building Regulation 2006

Regulation Amended

Clause 2 provides that this part amends the *Building Regulation 2006*.

Insertion of new part 2A

Clause 3 inserts provisions relating to building assessment work.

New section 5A defines *relevant expert*, for the purposes of the Part.

New section 5B provides that a building development application for building work in a natural hazard management area (flood) may rely on a defined flood level declared by a local government under section 13 or a lower level stated in a building development application. If the application proposes a lower level it must be accompanied by a report prepared by a relevant expert. Local government will need to determine whether the stated level is appropriate. This is achieved in the Regulation by providing local government with concurrence agency jurisdiction under the *Sustainable Planning Regulation 2009*.

New section 5C provides that a building application for building work in a natural hazard management area (flood) may rely on a maximum flow velocity of water declared by a local government under section 13 or a

lower flow velocity stated in the building development application. If the application proposes a lower level it must be accompanied by a report from a relevant expert or the report must be based on historical documents or information. Local government will need to determine whether the stated flow velocity is appropriate. This is achieved in the Regulation by providing local government with concurrence agency jurisdiction under the *Sustainable Planning Regulation 2009* (refer to clause 12) and a note refers to this under subsection 4.

New section 5D specifies that if a local government has not declared a maximum flow velocity of water under section 13 a building development application may state a maximum flow velocity of water for the location where the building work will be carried out. If a flow velocity is stated in the application the assessment manager must determine whether the velocity is appropriate. In making this determination the assessment manager may have regard to a report that is prepared by a relevant expert or that is based on historical documents or information.

New section 5E designates a minimum freeboard for building work in natural hazard management areas. This is achieved by specifying a freeboard of at least 300mm unless the local government has declared a higher level under section 13.

Amendment of s 6 (Operation of pt 3)

Clause 4 corrects a cross referencing error in a note following section 6.

Amendment of s 13 (Land liable to flooding)

Clause 5 provides for the matters that a local government may declare in a planning scheme, temporary local planning instrument or by resolution that can be used for the assessment of building work. These matters include:

- defined flood level
- maximum flow velocity of water
- an inactive flow or backwater area
- freeboard that is more than 300mm
- finished floor level of class 1 buildings built in natural hazard management area (flood).

Insertion of new s 51BLAA

Clause 6 adopts the new Queensland Development Code Mandatory Part 3.5 for construction of buildings in flood hazard areas. This new part will take effect on gazettal.

Amendment of sch 4 (Dictionary)

Clause 7 amends the dictionary to include definitions for the following defined terms:

- defined flood level
- finished floor level
- freeboard
- inactive flow or backwater area
- natural hazard management area (flood)
- maximum flow velocity of water
- relevant expert

Part 3 Amendment of the Standard Plumbing and Drainage Regulation 2003

Regulation Amended

Clause 8 provides that this part amends the *Standard Plumbing and Drainage Regulation 2003*.

Amendment of s 12A (Limited application of some applied provisions)

Clause 9 includes the newly revised schedule of applied provisions in the list specifying limited application of certain applied provisions.

Amendment of sch 1 (Applied provisions)

Clause 10 inserts QDC MP 3.5 into the schedule of applied provisions and renumbers the existing entries.

Part 4 Amendment of the Sustainable Planning Regulation 2009

Regulation Amended

Clause 11 provides that this part amends the *Sustainable Planning Regulation 2009*.

Amendment of sch 7 (Referral agencies and their jurisdictions)

Clause 12 inserts a new table to provide a concurrence agency jurisdiction to local government for a building development application that relies on a defined flood level or maximum flow velocity of water that is lower than that declared by local government under the new section 13 of the *Building Regulation 2006*.

This will give local government power to ensure that stated flood levels or maximum flow velocities are appropriate for the building development application.

Amendment of sch 26 (Dictionary)

Clause 13 inserts new definitions for *defined flood level*, *maximum flow velocity of water* and *natural hazard management area (flood)*, which are mentioned in the amendments to schedule 7.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Housing and Public Works.

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