

Building and Other Legislation Amendment Regulation (No. 2) 2013

Explanatory notes for SL 2013 No.217

made under the

Building Act 1975
Sustainable Planning Act 2009

General Outline

Short title

Building and Other Legislation Amendment Regulation (No. 2) 2013

Authorising law

Sections 13, 21 and 261 of the *Building Act 1975* (BA)
Section 251, 254, 272 and 283 of the *Sustainable Planning Act 2009* (SPA)

Policy objectives and the reasons for them

The policy objectives of the amendment regulation are to:

1. provide that the installation of a solar collector on the roof of a building, is self-assessable building work and that a building development approval is not required for such work; and
2. implement a streamlined legislative scheme for assessing building development applications for building work to be undertaken over or near sewers, water mains, stormwater drains or combined sanitary drains (relevant infrastructure), that will:
 - reduce the regulatory burden, costs and delays associated with obtaining approvals for such work; and
 - introduce greater consistency, fairness and transparency in relation to the assessment of applications.

Solar collectors

It is unclear whether building work for the installation of a solar hot water system or photovoltaic solar system (solar collector) on the roof of a building is assessable, self-assessable or exempt development under the current legislative framework. This lack of clarity has created confusion among homeowners and the solar industry. They have also expressed concern that owners may obtain a building development approval (building approval), at significant cost, when such an approval is unnecessary.

The amendment regulation provides that the installation of a solar collector on the roof of a building is self-assessable building work. Repairing, maintaining or altering an existing solar collector will also be self-assessable. However, the work will still be required to meet all relevant building regulations and standards. The amendments will help to reduce the regulatory burden, costs and delays associated with obtaining unnecessary building approvals for such work.

Building over or near relevant infrastructure

The *Building and Other Legislation Amendment Act 2013* (BOLA) removes from the *Water Supply (Safety and Reliability) Act 2008* (WSRA) a requirement for a private building certifier to ensure that consent from a service provider has been obtained before approving building work to be undertaken over or near the service provider's sewer or water main. Obtaining such consent has, in some cases, been costly and time consuming. In addition, there has been no consistent basis on which service providers have granted consent and no mechanism for appealing a decision to refuse to grant consent.

The amendment regulation complements the BOLA. The BOLA provisions, the amendment regulation and a new part of the Queensland Development Code (QDC) that the amendment regulation approves, will together allow building certifiers to grant building approvals for building work over or near relevant infrastructure, if the proposed building work complies with QDC MP 1.4 – Building over or near relevant infrastructure (MP 1.4).

The scheme will significantly reduce the regulatory burden, costs and delays associated with obtaining building approvals for building work over or near sewers, water mains, stormwater drains or combined sanitary drains (relevant infrastructure). In addition, it will introduce consistency, fairness and transparency in relation to the assessment of applications by relevant service providers.

Achievement of policy objectives

To achieve its objectives, the amendment regulation will amend:

- the *Building Regulation 2006* (BR) to:
 - provide that the installation of a solar collector on the roof of a building is self-assessable building work, and similarly, repairing, maintaining or altering an existing solar collector is self-assessable building work; and
 - approve a new part of the QDC for building work over or near relevant infrastructure; and

- introduce a requirement for a private building certifier to give a notice about building work to be undertaken over or near relevant infrastructure to particular service providers; and
- the *Sustainable Planning Regulation 2009* (SPR) to prescribe the following for building work to be undertaken over or near relevant infrastructure:
 - relevant service providers as concurrence agencies; and
 - a concurrence agency application fee; and
 - a referral agency assessment period.

Solar collectors

Under current legislation, all building work is assessable development unless it is self-assessable or exempt development. Both assessable and self-assessable development must comply with all relevant provisions of the BA and associated standards, whereas exempt development need not comply with any laws or standards. If self-assessable development does not comply with the requirements mentioned, it becomes assessable development under the BA.

A building development application must be prepared for proposed assessable development. The work may be carried out only if a building certifier assesses the application and grants a building approval for it. By contrast, a building approval is not required for self-assessable development. The responsibility for ensuring the work complies with relevant provisions and standards rests with the owner concerned.

Self-assessable building work is defined in Schedule 1 of the BR and is limited to work of a minor nature. The amendment regulation amends Schedule 1 so that the installation of a solar collector on the roof of a building will be self-assessable development. It also provides that repairing, maintaining or altering an existing solar collector (i.e. one that is already installed on the roof of a building) will be self-assessable development. Although such work will be required to meet all relevant building regulations and standards, a building approval will not be required to be obtained for the work. This will include Australian Standard 1170.2 'Structural Design Actions - Wind Actions'.

The definition of solar collectors is intended to include both solar hot water systems and photovoltaic solar panels. The definition of solar hot water system is intended to include all components of the water heating system such as water piping, electrical wiring and hot water storage tanks.

The amendments will help to reduce the regulatory burden and costs and delays associated with obtaining unnecessary building approvals for such work.

Building over or near relevant infrastructure

Under the new streamlined legislative scheme, building certifiers will be able to grant building approvals for building work over or near relevant infrastructure, if the proposed building work complies with MP 1.4.

MP 1.4 is intended to ensure building work will only be approved if it does not:

- (a) damage relevant infrastructure;
- (b) impede the access to it required for the purposes of inspecting, maintaining or replacing the infrastructure;
- (c) allow gas to escape in a way that would harm individuals in close proximity to the infrastructure.

MP 1.4 applies to all buildings and structures. Although it includes performance criteria for all buildings and structures, it only contains acceptable solutions for those criteria, for class 1 buildings and class 10 buildings and structures (for example a single detached house, attached house and garage, carport or shed). Under the amendment regulation, if an application for building work over or near a relevant service provider's infrastructure does not comply with the acceptable solutions, or there are no acceptable solutions for the application, it will be referred to the service provider so it may exercise its jurisdiction as a concurrence agency for the application.

In its role as a concurrence agency the service provider will assess whether the proposed building work complies with the performance criteria set out in MP 1.4. It may decide that particular conditions must be attached to any building approval for the building work, or may refuse to support the application. The proposed regulation provides that a concurrence agency has 20 business days to assess the application. It also allows a service provider to charge a reasonable fee based on the cost of assessing the application.

The proposed regulation requires a private building certifier who has granted a building approval for building work over or near a relevant service provider's infrastructure to give a notice to the service provider about the building work. Such a notice will only be required to be given if the service provider would otherwise be unaware of the proposal to undertake the work because the service provider is not a local government and has not considered the building application as a concurrence agency. The information is intended to assist the service provider to manage their inspection, maintenance and replacement work.

Under the new legislative scheme, a person may appeal a decision to impose conditions or a refusal to grant a building approval. Appeal will be able to be made to a building and development dispute resolution committee established under the SPA. This will provide applicants with a quick and cost effective dispute resolution service. The Planning and Environment Court has a limited jurisdiction to review a decision made by a committee under the SPA.

The new legislative scheme will significantly reduce the regulatory burden and costs and delays associated with building approvals. It will also provide applicants for building approvals and building certifiers with greater certainty and consistency. In addition, it will introduce consistency, fairness and transparency in relation to the assessment of applications by relevant service providers.

Consistency with policy objectives of authorising law

The amendments of the BR are consistent with the objectives of the BA, which regulates, among other things, building work and the performance of building certifying functions. The amendments of the SPR are consistent with the objectives of the SPA which include managing the process by which development takes place, including by ensuring the process is accountable, effective and efficient.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

Solar collectors

There are no effective alternative ways of achieving the stated policy objective of providing that the installation of a solar collector on the roof of a building is self-assessable building work and clarifying that a building development application will not be required for such work.

Building over or near relevant infrastructure

An alternative policy option, of introducing MP 1.4, a mandatory part of the QDC, was considered. It would have involved continuation of the non-mandatory part of the QDC, called NMP 1.4 - Excavation and Piling Near Sewers, Stormwater Drains and Water Mains (NMP 1.4). The objectives of NMP 1.4 are similar to those of MP 1.4 in that they seek to ensure building work will only be approved if it does not damage relevant infrastructure or impede access to it required for the purposes of inspecting, maintaining or replacing the infrastructure. However, the uptake of NMP 1.4 by local governments has been poor.

Over time, individual local governments, and more recently, water providers have developed their own assessment criteria and policies for determining an application for building work over or near relevant infrastructure. This has resulted in the use of inconsistent assessment and approval mechanisms across Queensland, creating uncertainty for applicants and the design and building sectors. The building sector has strongly advocated for a single state-wide mandatory standard since 2010, and MP 1.4 provides that standard.

It is considered that the new legislative scheme provides the only reasonable means of achieving the overall policy objective of achieving efficiency, consistency and fairness in relation to proposals to build over or near relevant infrastructure.

Benefits and costs of implementation

Solar collectors

The amendment regulation will benefit the community by ensuring a streamlined and cost effective process for installing a solar collector on the roof of a building, or repairing, maintaining or altering an existing solar collector. The amendment regulation will achieve this outcome by making it clear that a building approval is not needed for such work. Obtaining such an approval is costly and involves a significant amount of red tape in the form of an application, assessments and delays. Such delays can affect the sales of these collectors.

No significant administrative costs will be associated with implementing the amendment regulation. The responsibility for ensuring the building work complies with relevant standards will rest with the owner of the building concerned.

Building over or near relevant infrastructure

The amendment regulation will benefit the community by introducing a streamlined legislative scheme for assessing building work over or near relevant infrastructure. The scheme will reduce the regulatory burden and costs and delays associated with building approvals for such work. It will also provide applicants for building approvals and building certifiers with greater certainty and consistency.

Under the new legislative scheme, a person may appeal a building certifier's decision in relation to a building application to a building and development dispute resolution committee (committee) established under the SPA, which will provide an applicant with a quick and cost effective dispute resolution service. By introducing access to the committees by prescribing relevant service providers as concurrence agencies, the amendment regulation will introduce fairness and transparency in relation to the assessment by relevant service providers of proposals to build over or near their infrastructure.

No significant administrative costs will be associated with implementing the amendment regulation. The costs associated with building development approvals and assessments by relevant service providers acting as concurrence agencies will be borne by applicants. Some of the costs associated with appeals to building and development dispute resolution committees will be borne by applicants and the remaining costs will be dealt with using existing budget allocations.

Consistency with fundamental legislative principles

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

Consultation

Solar collectors

An eight week public consultation process was undertaken in 2013 on a draft regulation that provided that building work for the installation of a roof mounted solar collector is self assessable development. There was a high level of community support for reviewing the current building assessment framework for installing solar collectors. Additional targeted consultation with some solar and building stakeholders was held to address particular issues.

Solar companies, such as Rheem and Ingenero, supported the proposal to provide that the work is self-assessable. Building stakeholders, including Timber Queensland, the Housing Industry Association (HIA) and the Queensland Master Builders Association (Master Builders), supported the proposal.

Building over or near relevant infrastructure

Two separate public consultation processes for the new legislative scheme were conducted in late 2011 and mid-2012, before the BOLA was introduced into the Queensland Parliament. In addition, the department has worked extensively with a wide range of stakeholders to develop the new legislative scheme, including the technical aspects of MP 1.4.

The new legislative scheme is supported by private building certifiers, relevant building stakeholders (such as the HIA and Master Builders), individual local governments and other service providers (including Seqwater, Queensland Urban Utilities and U nitywater), and the Local Government Association of Queensland.