

Building and Other Legislation Amendment Regulation (No. 4) 2013

Explanatory notes for 2013 SL No. 304

made under the

Building Act 1975
Sustainable Planning Act 2009

General Outline

Short title

Building and Other Legislation Amendment Regulation (No.4) 2013

Authorising law

Sections 13 and 261 of the *Building Act 1975*
Sections 251 and 254 of the *Sustainable Planning Act 2009*

Policy objectives and the reasons for them

The policy objectives of the amendment regulation are to:

1. reference and align the terminology of the *Building Regulation 2006* (BR) and the *Sustainable Planning Regulation 2009* (SPR) to State Planning Policy 2013 (SPP 2013);
2. clarify the relationship between the BR and Queensland Development Code (QDC) Mandatory Part 3.5 - Construction of buildings in flood hazard areas (MP 3.5); and
3. adopt a revised version of QDC MP 3.5.

The amendments to the BR and the SPR are largely consequential in nature to align with the new terminology of the SPP 2013. They also aim to simplify the assessment of building work in designated flood hazard areas.

BR and SPP 2013

The amendment regulation replaces a reference to the 'Interim policy for mitigating the adverse impacts of floods' (Interim policy) when making a designation under section 13 of the BR with a reference to SPP 2013.

The amendment regulation also requires local governments to comply with any applicable Temporary State Planning Policy (TSPP) when designating a flood hazard area for the purpose of section 13. The *Sustainable Planning Act 2009* allows the planning Minister to make a TSPP to suspend or otherwise affect the operation of a SPP. Previously the BR did not include any reference to a TSPP. The amendment regulation will now provide for any future TSPPs that may be made in relation to addressing flood hazards, to the extent they apply to a designation of a flood hazard area under the BR.

The amendment regulation also adopts new terminology specific to SPP 2013 in section 13 of the BR, such as replacing “natural hazard management area (flood)” with “flood hazard area”.

Clarifying the relationship between the BR and MP 3.5

Section 13 of the BR enables a local government to make a designation of a ‘natural hazard management area (flood)’ in a planning scheme, temporary local planning instrument or by resolution for the purpose of the building assessment provisions.

The amendment regulation clarifies that where a local government designates or declares a matter in accordance with section 13 of the BR, it must clearly state that the designation or declaration is for the purposes of that section. Previously some local governments indicated they were uncertain whether any mapping overlay or other indication of a flood affected area, for example one that may have been included for planning purposes, could be taken to be a designation of a flood hazard area under the BR. To avoid confusion, the amendments will mean that a local government must clearly state that a designation or declaration has been made under the BR.

A note has also been included under section 13 of the BR to state that QDC MP 3.5 only applies if a local government has designated a flood hazard area and set a defined flood level. This will highlight for local governments the specific circumstances that effectively trigger the QDC MP 3.5 requirements. Local governments may also designate a flood hazard area and set a finished floor level for class 1 buildings (without triggering the full requirements of QDC MP 3.5) if, for example, information about likely flood levels and other related matters, such as expected maximum flow velocity of flood waters, is not available.

The amendment regulation further simplifies the relationship between the BR and QDC MP 3.5 by removing Part 2A of the BR. Part 2A included a range of provisions and defined terms relating to the application of MP 3.5. For example, the definitions of maximum flow velocity, defined flood level and freeboard that are referenced in MP 3.5 were previously contained within Part 2A. Some building industry stakeholders and local governments have suggested that locating these provisions and definitions under Part 2A of the BR instead of under MP 3.5 is unnecessarily confusing and time consuming.

The provisions of Part 2A have instead been reflected in the revised version of QDC MP 3.5. This will mean that an applicant or building certifier will no longer be required to refer to Part 2A of the BR when determining if and how MP 3.5 applies to proposed building work. Removal of Part 2A will provide all relevant provisions and definitions within a single document for greater simplicity and ease of use.

The amendment regulation removes defined terms, such as 'inactive flow or backwater area' and 'finished floor level' from Schedule 4 (Dictionary) of the BR. These terms are inserted under section 13 as they relate specifically to this section.

Revision of MP 3.5

The amendment regulation removes the 22 October 2012 version of QDC MP 3.5 from the BR and adopts the 20 December 2013 version of this part.

QDC MP 3.5 has been updated to remove reference to the Australian Building Codes Board's draft national standard for buildings in a flood hazard area and instead adopt parts of the final version. Although the National Construction Code (NCC) was amended on 1 May 2013 to reference the final version of the national standard, the QDC prevails over the NCC to the extent of any inconsistency.

Other amendments to the QDC MP 3.5 ensure consistency in terminology with the new SPP 2013. In addition, terms defined under the omitted Part 2A of the BR have been incorporated within the revised version of QDC MP 3.5 to simplify its application and interpretation.

Consequential amendments to the SPR

The amendment regulation updates Schedule 7 of the SPR, which specifies referral agencies and their jurisdictions, including for QDC MP 3.5. The references to a "natural hazard management area (flood)" are replaced with "flood hazard area" which aligns with SPP 2013 terminology.

The amendment regulation also aligns Schedule 7 of the SPR with the amendments to remove Part 2A of the BR.

Achievement of policy objectives

To achieve its objectives, the amendment regulation will amend the:

- BR to:
 - adopt a revised part of QDC MP 3.5; and
 - reference the new SPP 2013 and any applicable Temporary State Planning Policy in terms of local government designations of flood hazard areas under the BR; and
 - simplify the relationship between the BR and QDC MP 3.5 for greater ease of use.
- SPR to align terminology in relation to referral agency jurisdiction for the QDC MP 3.5 with SPP 2013 and reflect the changes to the BR.

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

There are no effective alternative ways of achieving the stated policy objective as the amendments are largely consequential in nature. In addition, the amendments clarify and simplify the relationship between the BR and the QDC MP 3.5 and provide more detailed guidance to local governments when designating a flood hazard area for the purpose of the building assessment provisions. These changes can only be given legal effect through the proposed amendments.

Benefits and costs of implementation

The amendments mean that local governments are required to comply with SPP 2013 when making a designation of a flood hazard area, thereby reflecting the State Government's current position in relation to addressing the potential impacts of flooding.

The amendment regulation will benefit the building sector, local governments and property owners by simplifying the relationship between the BR and the QDC MP 3.5. This is expected to result in time savings and less confusion, as there will be no need to address the BR to find definitions and provisions that affect the application of the QDC MP 3.5. Instead, all relevant information and definitions are now located within a single document.

The changes to the BR also provide greater certainty to local governments when making a designation of a flood hazard area under section 13. The amendments also provide clarity for building certifiers in determining whether there is an applicable designation or declaration under a local planning instrument in relation to assessing a building development application.

Adopting the revised version of QDC MP 3.5 means it refers to relevant sections of the most current version of the ABCB's national standard and continues to provide a range of practical and up to date technical solutions that will help mitigate the adverse impacts of floods on buildings.

No significant administrative costs will be associated with implementing the amendment regulation.

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

Targeted consultation was undertaken due to the technical nature of the amendments. The amendments were discussed broadly with the Department of Housing and Public Works' Building Industry Consultative Group.

Stakeholders support amendments to simplify the operation of the BR and QDC MP 3.5.

The Local Government Association of Queensland also supports the amendment regulation and its intention to provide clearer direction for local governments when making a designation of a flood hazard area under section 13 of the BR.

The Department of State Development, Infrastructure and Planning and the Department of the Premier and Cabinet were also consulted and indicated their support for the amendments.