

Building Amendment Regulation (No. 3) 2014

Explanatory notes for SL 2014 No. 293

made under the

Building Act 1975

General Outline

Short title

Building Amendment Regulation (No. 3) 2014

Authorising law

Sections 13 and 261 of the *Building Act 1975*

Policy objectives and the reasons for them

The policy objectives of the amendment regulation are to refine a 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.

Queensland Development Code (QDC) Mandatory Part 1.4 – ‘Building over or near relevant infrastructure’ (MP 1.4) commenced on 1 November 2013 and applies to all building work for a building or structure to be carried out on, or adjacent to, a lot that contains relevant infrastructure.

MP 1.4 was introduced as part of a new consistent approval process for this type of building work, with the aim of reducing red tape and costs for building applicants. Previously, applicants had to obtain consent from the relevant service provider and there was no consistent process or criteria for obtaining that consent.

Feedback from the building and certification industries and some local governments and service providers has resulted in a number of key areas of MP 1.4 being reviewed in 2014.

The amendments to MP 1.4 address stakeholder feedback that:

- unnecessary referral agency applications are being triggered;
- the building solutions in MP 1.4 are too restrictive for light-weight buildings and structures; and
- easements will not always provide sufficient protection to infrastructure and MP 1.4 should apply in these circumstances.

Achievement of policy objectives

To achieve its objectives, the amendment regulation will amend the *Building Regulation 2006* to approve the replacement of MP 1.4 for building work over or near relevant infrastructure.

To address the stakeholder feedback three key areas of MP 1.4 have been amended. These areas cover:

- a proximity exemption for all classes of building;
- streamlined solutions for light-weight buildings and structures; and
- clarifying what happens when an easement is registered in favour of the relevant service provider.

Proximity exemption

Presently some applications trigger costly and time-consuming referral agency responses despite the work being a significant distance from relevant infrastructure. The Application provision of MP 1.4 has been amended to reduce the number of applications being referred to referral agencies, while still ensuring appropriate protection for infrastructure.

Provisions have been drafted so that building work will be exempted from the application of MP 1.4 where it satisfies certain requirements and is the following distance from the infrastructure:

- 3m for a class 1 or 10 building or structure
- 5m for a class 2-9 building (reduced from the present 10m)

Currently, a Form 32 'Relevant information for service providers' must be provided by a private building certifier to the relevant service provider when the service provider would not know about the building work e.g. where no referral occurred. As a result of the proximity exemption, the requirement to provide a Form 32 is being removed where the work is greater than 3m away (for class 1 and 10 buildings and structures) or 5m away (for class 2-9 buildings). This ensures that the form will only be required where there remains an operational need for service providers to receive the information.

Light-weight buildings and structures

Stakeholders have suggested that MP 1.4 does not provide cost-effective compliance solutions for cheap and simple light-weight building and structure applications as full compliance with MP 1.4 is required. Consequently, solutions have been prepared that provide concessions for light-weight buildings and structures. The solutions allow simple building work over infrastructure, such as sheds, carports, garages, patios, decks, gazebos or rainwater tanks. MP 1.4 will exclude certain higher risk infrastructure from being built over such as water mains, connections and maintenance covers.

The amendments have been developed to provide a balance between protecting high risk infrastructure while still maximising development potential. The concessions in MP 1.4 effectively remove the access requirements for infrastructure (except the above higher risk infrastructure) and also provide additional acceptable solution options for light-weight building footings.

Easements exemption

MP 1.4 does not currently apply where an easement is registered in favour of a service provider. This was raised as a concern given easements do not always afford the same protection as MP 1.4.

It was considered whether the presence of an easement in favour of a service provider should still result in exemption from MP 1.4 applying. Feedback reveals that easements do not always provide the infrastructure with sufficient protection from building work. Also building certifiers are obliged to apply the broad National Construction Code (NCC) provisions to ensure that sufficient protection is maintained. It is highly desirable that the more tailored provisions of MP 1.4 continue to apply rather than the broader NCC requirements.

Consequently, the MP 1.4 exemption is being removed. This means applicants for the building work will be required to satisfy both the easement conditions and the MP 1.4 requirements. This will normally mean the applicant will just satisfy the higher of the two standards.

Consistency with policy objectives of authorising law

The amendments of the *Building Regulation 2006* are consistent with the objectives of the *Building Act 1975*, which regulates, among other things, building work and building certifying functions.

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

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.

Applicants are required to comply with MP 1.4 and therefore the only policy option available is to amend MP 1.4 to address stakeholder concerns.

Benefits and costs of implementation

The amendment regulation will benefit the community by refining the 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.

No significant administrative costs will be associated with implementing the amendment regulation. It is possible that service providers may experience an increase in operational costs as a result of the revised building standards under MP 1.4, particularly as a result of the light-weight building solutions. This will depend on the repair and replacement procedures being used in the particular local government area.

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

Since becoming aware of the issues mentioned above, potential solutions were discussed with a number of key stakeholders as part of an industry focus group. Membership of the focus group included the Australian Institute of Building Surveyors, Royal Institution of Chartered Surveyors, Master Builders Association of Queensland, Housing Industry Association, Queensland Water Directorate, Queensland Urban Utilities, Unitywater, Queensland Law Society, shed and carport manufacturers, the Department of Energy and Water Supply, Local Government Association of Queensland and a number of local governments.

Between 20 June and 1 August 2014 the Department held public consultation sessions on a draft version of the proposed amendments to MP 1.4. Sessions were held at the Sunshine Coast, Logan, Rockhampton, Roma, Brisbane, Moreton Bay, Cairns, Townsville, Mackay, Toowoomba, Gold Coast, Redlands and Bundaberg.

A draft version of MP 1.4 was placed on the department's website for four weeks' public consultation concluding on 1 August 2014.

Notes on provisions

Clause 1 provides that the short title of the Regulation is the *Building Amendment Regulation (No. 3) 2014*.

Clause 2 provides that the amendment Regulation commences on 15 December 2014.

Clause 3 provides that the Regulation amends the *Building Regulation 2006*.

Clause 4 amends section 51AB by replacing the version of MP 1.4 published on 2 December 2013 with a revised version of MP 1.4 to commence on 15 December 2014.

Clause 5 amends section 53A to vary the circumstances in which the notice requirement applies for particular building development approvals.

Subsection (1) amends section 53A(1)(b) so the notice requirement only applies to an application involving a sewer of a sewerage service provider. Previously the requirement applied for a sewer of a relevant service provider. Relevant service provider is defined to include sewerage service providers and water service providers. As section 53A no longer refers to water mains there is need to reference the broader term of relevant service provider as sewerage service provider is sufficiently encompassing.

Subsection (2) amends section 53A(1)(c) so the qualifier only applies to a sewerage service provider rather than a relevant service provider. As water service providers are no longer applicable there is no reason to reference the broader relevant service provider definition.

Subsection (3) inserts a new subsection (d) into section 53A(1). Subsection (d) provides an additional qualifier on the circumstances when a notice is required for an application involving a class 1 building or a class 10 building or structure. The notice requirement now only applies where QDC part 1.4 applies because of the distance between the building work and the sewer. This means that a notice will not be required where the application is excluded from QDC part 1.4 because the building work is a significant distance from infrastructure. Refer to the Application provision of QDC part 1.4 for the distances applicable for class 1 and 10 buildings and structures.

Subsection (4) removes section 53A(2) as the notice requirement is no longer necessary for applications involving class 2-9 buildings. Due to the application of QDC part 1.4, service providers will receive details of building work in proximity to their infrastructure via the referral agency process.

Subsection (5) amends section 53A(3) to state that the notice must now only be provided to a sewerage service provider, rather than a relevant service provider.

Subsection (6) amends section 53A(4) to remove the reference to a water main. As circumstances involving water mains are no longer applicable for section 53A the reference to water main in the maintenance cover definition has been removed.

Subsection (7) amends section 53A(5) to remove the definitions for relevant service provider, water main and water service provider. These definitions are no longer required due to the various other amendments to section 53A.

Subsection (8) amends section 53A(5) to amend the definition of maintenance cover. The definition now no longer refers to a water main.

Subsection (9) amends section 53A(3) to (5) to renumber as necessary.