



Queensland

Building and Other Legislation (Cladding) Amendment Regulation 2018

Subordinate Legislation 2018 No. 110

made under the

Building Act 1975

State Penalties Enforcement Act 1999

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Building and Other Legislation (Cladding) Amendment Regulation 2018*.

2 Commencement

This regulation commences on 1 October 2018.

Part 2 Amendment of Building Regulation 2006

3 Regulation amended

This part amends the *Building Regulation 2006*.

4 Amendment of s 4 (Accepted building work for the Planning Act—Act, s 21(2)(a))

(1) Section 4(2), ‘section 25(5)’—

omit, insert—

section 21(5)

(2) Section 4—

insert—

(3) Also, building work prescribed in schedule 1 is accepted development for the Planning Act only to the extent that the building work does not include altering cladding forming part of, or attached or applied to, an external wall or another external part of a building other than the roof.

5 Insertion of new pt 4A

After section 16M—

insert—

Part 4A Combustible cladding

Division 1 Preliminary

16N Application of part

- (1) This part applies to a private building regardless of whether—
 - (a) a building development approval was given for building work under which cladding was included in, or attached or applied to, the building; or
 - (b) there is a current recognised certificate for cladding that is included in, or attached or applied to, the building.
- (2) In this section—

recognised certificate see section 51(2).

16O Definitions for part

In this part—

affected private building means a private building that has combustible cladding forming part of, or attached or applied to, an external wall or another external part of the building other than the roof.

building fire safety risk assessment see section 16X(1)(b).

building industry professional—

1 A *building industry professional* is—

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- (a) a building certifier—level 1; or
 - (b) a person who holds a licence of 1 or more of the following classes under the QBCC Act—
 - (i) builder—open;
 - (ii) building design—open;
 - (iii) fire safety professional; or
 - (c) a practising architect under the *Architects Act 2002*; or
 - (d) a practising professional engineer under the *Professional Engineers Act 2002* registered in 1 or more of the following areas of engineering—
 - (i) civil engineering;
 - (ii) fire engineering;
 - (iii) fire safety;
 - (iv) structural engineering.
- 2 Also, for a private building that is no more than 3 storeys and has a total floor area of less than 2,000m², a *building industry professional* includes—
- (a) a building certifier—level 2; and
 - (b) a person who holds a licence of 1 or more of the following classes under the QBCC Act—
 - (i) builder—medium rise;
 - (ii) building design—medium rise.

building industry professional statement see section 16T(1)(b).

combustible cladding means cladding that—

-
- (a) is made of a material of a kind that is not mentioned in the BCA, clause C1.9(e)(i), (ii), (iii), (iv) or (v); or
 - (b) is deemed to be combustible under AS 1530.1—1994 (Methods for fire tests on building materials, components and structures, Part 1: Combustibility test for materials), section 3.4(a), (b) or (c).

combustible cladding checklist (part 1) means the checklist of that name on the online system.

combustible cladding checklist (part 2) means the checklist of that name on the online system.

combustible cladding checklist (part 3) means the checklist of that name on the online system.

completed, for a checklist, means—

- (a) the checklist is filled out on the online system by the owner; and
- (b) the filled-out checklist is—
 - (i) printed; and
 - (ii) signed and dated by the owner in the presence of a qualified witness; and
 - (iii) signed and dated by the qualified witness.

convicted means found guilty, or having a plea of guilty accepted, by a court, whether or not a conviction is recorded.

fire engineer means a practising professional engineer under the *Professional Engineers Act 2002* registered in either or both of the following areas of engineering—

- (a) fire engineering;
- (b) fire safety.

fire engineer statement see section 16X(1)(c).

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online system means the online system established by the department for the administration of this part.

Note—

The website containing the online system is www.saferbuildings.qld.gov.au.

private building means a building—

- (a) that is—
 - (i) a class 2, 3, 4, 5, 6, 7, 8 or 9 building; and
 - (ii) of a type A or type B construction; and
- (b) for which a building development approval was given, after 1 January 1994 but before 1 October 2018, for building work—
 - (i) to build the building; or
 - (ii) to alter the cladding on the building; and
- (c) that is owned by—
 - (i) only 1 or more private entities; or
 - (ii) 1 or more private entities and 1 or more other entities, if the private entities jointly hold more than 50% interest in the building.

private entity means an entity that is not—

- (a) the State, the Commonwealth, or another State; or
- (b) an agent, authority, instrumentality or other entity of the State, the Commonwealth, or another State.

QBCC investigator means an investigator appointed under the *Queensland Building and Construction Commission Act 1991*, section 104B.

qualified witness means a person mentioned in the *Oaths Act 1867*, section 13(1)(a), (b) or (c).

type A construction means the type of construction referred to as Type A construction in the BCA, part C1.

type B construction means the type of construction referred to as Type B construction in the BCA, part C1.

16P References to owner

For this part—

- (a) a reference to an owner is taken to be a reference to the owner of a private building; and
- (b) the owner of a private building that comprises 2 or more lots is taken to be the relevant body corporate, however called.

Division 2 Obligations on owners of private buildings

Subdivision 1 Obligations relating to combustible cladding checklist (part 1)

16Q Registering and giving completed checklist to QBCC

- (1) An owner must, within the compliance period—
 - (a) register, by using the online system, the owner's name and the address of the owner's private building; and

[s 5]

- (b) give a copy of a completed combustible cladding checklist (part 1) for the building to the QBCC by using the online system.

Maximum penalty—20 penalty units.

- (2) The owner may apply to the QBCC commissioner to extend the period for complying with subsection (1).
- (3) The application must be made—
 - (a) in the approved form; and
 - (b) at least 28 days before the end of the period.
- (4) The QBCC commissioner may extend the period if the QBCC commissioner considers the extension is reasonable in the circumstances.
- (5) In this section—

compliance period means—

- (a) the period ending on 29 March 2019 or, if the QBCC has given the owner a notice under section 16ZM(2) for the owner's private building, the period stated in the notice; or
- (b) if, under subsection (4), the QBCC commissioner extends the period for complying with subsection (1)—the extended period.

16R Keeping completed checklist

An owner must keep the completed combustible cladding checklist (part 1) for the owner's private building—

- (a) for at least 7 years after a copy of the checklist is given to the QBCC; and
- (b) if the owner is required to keep a plan or document for the building under the

Building Fire Safety Regulation 2008, section 71—with that plan or document at each place the plan or document is required to be kept under that section.

Maximum penalty—10 penalty units.

Subdivision 2 Obligations relating to combustible cladding checklist (part 2)

16S Application of subdivision

- (1) This subdivision applies if—
 - (a) the online system indicates to an owner who has filled out a combustible cladding checklist (part 1) for the owner's private building that the building may be an affected private building; or
 - (b) an owner has not complied with section 16Q for the owner's private building.
- (2) However, this subdivision does not apply to an owner in relation to a private building if, before the compliance period under section 16T ends—
 - (a) the owner knows or suspects that the building is an affected private building; and
 - (b) the owner gives the QBCC notice, by using the online system, of that knowledge or suspicion.

16T Giving completed checklist and related statement to QBCC

- (1) The owner must, within the compliance period, give to the QBCC, by using the online system, a copy of—

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- (a) a completed combustible cladding checklist (part 2) for the owner's private building; and
- (b) a statement, complying with subsection (2), about whether or not the building may be an affected private building (a ***building industry professional statement***).

Maximum penalty—20 penalty units.

- (2) A building industry professional statement must be—
 - (a) in the approved form; and
 - (b) prepared by a building industry professional.
- (3) The owner may apply to the QBCC commissioner to extend the period for complying with subsection (1).
- (4) The application must be made—
 - (a) in the approved form; and
 - (b) at least 28 days before the end of the period.
- (5) The QBCC commissioner may extend the period if the QBCC commissioner considers the extension is reasonable in the circumstances.
- (6) In this section—

compliance period means—

 - (a) the period ending on 29 May 2019 or, if the QBCC has given the owner a notice under section 16ZM(2) for the owner's private building, the period stated in the notice; or
 - (b) if, under subsection (5), the QBCC commissioner extends the period for complying with subsection (1)—the extended period.

16U Keeping completed checklist and related statement

The owner must keep the completed combustible cladding checklist (part 2) and the building industry professional statement for the owner's private building—

- (a) for at least 7 years after a copy of the checklist or statement is given to the QBCC; and
- (b) if the owner is required to keep a plan or document for the building under the *Building Fire Safety Regulation 2008*, section 71—with that plan or document at each place the plan or document is required to be kept under that section.

Maximum penalty—10 penalty units.

Subdivision 3 Obligations relating to combustible cladding checklist (part 3)

16V Application of subdivision

This subdivision applies if—

- (a) the online system indicates to an owner who has filled out a combustible cladding checklist (part 2) for the owner's private building that the building may be an affected private building; or
- (b) an owner gives the QBCC notice under section 16S(2)(b) for the owner's private building; or
- (c) a QBCC investigator—
 - (i) reasonably suspects the completed combustible cladding checklist (part 2)

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for an owner's private building is false or misleading in a material particular; and

- (ii) gives the owner notice of the suspicion; or
- (d) an owner has not complied with section 16T for the owner's private building.

16W Giving fire engineer details to QBCC

- (1) The owner must, unless the owner has a reasonable excuse, within the compliance period, give to the QBCC, by using the online system, the name and registration number of the fire engineer engaged by the owner for complying with this subdivision.

Maximum penalty—50 penalty units.

- (2) The owner may apply to the QBCC commissioner to extend the period for complying with subsection (1).
- (3) The application must be made—
 - (a) in the approved form; and
 - (b) at least 28 days before the end of the period.
- (4) The QBCC commissioner may extend the period if the QBCC commissioner considers the extension is reasonable in the circumstances.
- (5) In this section—

compliance period means—

- (a) the period ending on 27 August 2019; or
- (b) if, under subsection (4), the QBCC commissioner extends the period for complying with subsection (1)—the extended period.

16X Giving completed checklist and related assessment and statement to QBCC

- (1) The owner must, unless the owner has a reasonable excuse, within the compliance period, give to the QBCC, by using the online system, a copy of each of the following documents for the owner's private building—
 - (a) a completed combustible cladding checklist (part 3);
 - (b) a report, complying with subsection (2), about the cladding forming part of, or attached or applied to, an external wall or another external part of the building other than the roof (a *building fire safety risk assessment*);
 - (c) a statement, complying with subsection (3), about the building fire safety risk assessment (a *fire engineer statement*).

Maximum penalty—165 penalty units.

- (2) A building fire safety risk assessment must—
 - (a) be prepared by a fire engineer; and
 - (b) include an assessment of the combustibility of the material that makes up the cladding; and
 - (c) if the cladding is assessed to be combustible cladding—include an assessment of the combustibility of the insulation or sarking located behind the cladding.
- (3) A fire engineer statement must be—
 - (a) in the approved form; and
 - (b) prepared by a fire engineer.
- (4) The owner may apply to the QBCC commissioner to extend the period for complying with subsection (1).

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- (5) The application must be made—
 - (a) in the approved form; and
 - (b) at least 28 days before the end of the period.
- (6) The QBCC commissioner may extend the period if the QBCC commissioner considers the extension is reasonable in the circumstances.
- (7) In this section—

compliance period means—

 - (a) the period ending on 3 May 2021 or, if the QBCC has given the owner a notice under section 16ZM(2), the period stated in the notice; or
 - (b) if, under subsection (6), the QBCC commissioner extends the period for complying with subsection (1)—the extended period.

16Y Keeping completed checklist and related assessment and statement

- (1) The owner must keep each of the following documents for the owner's private building for the period mentioned in subsection (2) or (3)—
 - (a) the completed combustible cladding checklist (part 3);
 - (b) the building fire safety risk assessment;
 - (c) the fire engineer statement.

Maximum penalty—10 penalty units.

- (2) A document mentioned in subsection (1)(a) or (c) must be kept for at least 7 years after a copy of the document is given to the QBCC.
- (3) A document mentioned in subsection (1)(b) must be kept—

- (a) if the document states the building is an affected private building, until the latest of the following—
 - (i) the day the combustible cladding is removed from the building;
 - (ii) the day a private certifier gives the owner a notice stating that the combustible cladding complies with the BCA;
 - (iii) the day that is 7 years after a copy of the assessment is given to the QBCC;or
- (b) otherwise—for at least 7 years after a copy of the assessment is given to the QBCC.

Subdivision 4 Other obligations relating to affected private buildings

16Z Application of subdivision

This subdivision applies if a building fire safety risk assessment for an owner's private building states the building is an affected private building.

16ZA Displaying affected private building notice

- (1) The owner must display a notice in the approved form for the building (an *affected private building notice*) in compliance with subsections (2) and (3).

Maximum penalty—30 penalty units.
- (2) The affected private building notice must be—
 - (a) displayed in a conspicuous position; and

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- (b) securely attached to a wall, or the internal side of a door, near a main entry point to the building; and
 - (c) if the building has a fire indicator panel—also securely attached to a wall, or the internal side of a door, that is adjacent to the panel.
- (3) The affected private building notice must be displayed—
- (a) within 60 business days after the building fire safety risk assessment is given to the owner; and
 - (b) until either—
 - (i) the combustible cladding is removed from the building; or
 - (ii) a private certifier gives the owner a notice stating that the combustible cladding complies with the BCA.

16ZB Giving copy of building fire safety risk assessment to lot owners and tenants

- (1) This section applies if the building comprises 2 or more lots.
- (2) If there is a body corporate roll kept for the building, the owner must give a copy of the building fire safety risk assessment to each lot owner, and each leasehold interest holder, for a lot in the building—
 - (a) for a person who is a lot owner or leasehold interest holder when the assessment is given to the owner—within 60 business days after the assessment is given to the owner; or
 - (b) for another person—within 60 business days after the person's name is entered on the body corporate's roll.

Maximum penalty—20 penalty units.

- (3) If there is no body corporate roll kept for the building, the owner must, within 60 business days after the building fire safety risk assessment is given to the owner, leave a copy of the assessment at, or post a copy of the assessment to, the address of each lot in the building.

Maximum penalty—20 penalty units.

- (4) However, the owner is not required to comply with subsection (2) for a person, or subsection (3) for a lot, if any of the following happens before the period for complying with the subsection for the person or lot ends—
- (a) the combustible cladding is removed from the building;
 - (b) a private certifier gives the owner a notice stating that the combustible cladding complies with the BCA;
 - (c) 7 years have passed since a copy of the assessment was given to the QBCC.

- (5) In this section—

leasehold interest holder, for a lot in a private building, means a person who holds a leasehold interest in the lot.

lot owner, for a lot in a private building, means a person mentioned in schedule 2, definition *owner*, of a building or structure, paragraphs (a)(i), (b)(i), (c)(i), (d)(i) or (e)(i) of the Act.

Subdivision 5 Change of ownership of private building

[s 5]

16ZC Definition for subdivision

In this subdivision—

new owner, for a private building, means the person who owns the building immediately after ownership of the building changes.

relevant provision means section 16Q(1), 16T(1), 16W(1) or 16X(1).

16ZD Original owner to give notice of compliance

- (1) This section applies if the ownership of a private building changes after the commencement but before the owner of the building (the *original owner*) has complied with 1 or more relevant provisions.
- (2) Before ownership of the building changes, the original owner must—
 - (a) give the new owner—
 - (i) a notice, in the approved form, about the extent to which the original owner has complied with this part; and
 - (ii) a copy of each document given by or to the original owner under this part; and
 - (b) give the QBCC a copy of the notice that is given to the new owner under paragraph (a)(i).

Maximum penalty—20 penalty units.

- (3) Subsection (2)(a)(ii) does not apply in relation to a document the original owner has given to the new owner under section 16ZF(3).

16ZE New owner's obligations relating to giving checklists and related documents

- (1) This section applies if—

-
- (a) an owner (the *original owner*) is required to comply with a relevant provision for the owner's private building; and
 - (b) before the end of the period for complying with the relevant provision, ownership of the building changes; and
 - (c) the original owner has not complied with the relevant provision for the building.
- (2) From when ownership of the building changes, the obligation to comply with the relevant provision for the building applies to the new owner.
- (3) For subsection (2)—
- (a) anything done by or in relation to the original owner for the relevant provision is taken to have been done by or in relation to the new owner; and
 - (b) the relevant provision applies with any other necessary changes.

16ZF New owner's obligations relating to keeping checklists and related documents

- (1) This section applies if—
- (a) an owner (the *original owner*) is required to keep a document, under section 16R, 16U or 16Y, that the owner has given to the QBCC for the owner's private building; and
 - (b) ownership of the building changes before the end of the period for which the document must be kept under the section.
- (2) From when ownership of the building changes, the obligation to keep the document under the section applies to the new owner.
- (3) The original owner must give the new owner the

[s 5]

document before the ownership of the building changes.

Maximum penalty for subsection (3)—20 penalty units.

16ZG New owner's obligation to display affected private building notice

- (1) This section applies if—
 - (a) an owner (the *original owner*) is required to display an affected private building notice under section 16ZA for the owner's private building; and
 - (b) ownership of the building changes before the end of the period for which the notice must be displayed.
- (2) From when ownership of the building changes, the obligation to display the notice under the section applies to the new owner.
- (3) However, if, when ownership of the building changes, the notice is not displayed under the section, the period mentioned in section 16ZA(3)(a) is taken to be—
 - (a) within 60 business days after the building fire safety risk assessment was given to the original owner; or
 - (b) if the period mentioned in paragraph (a) has passed—within 5 business days after ownership of the building changes.

Division 3 Obligations on building industry professionals and fire engineers

16ZH Building industry professional statement

- (1) A building industry professional who prepares and signs a building industry professional statement about a private building for the purposes of section 16T or 16ZK must, within 5 business days after the statement is signed—
 - (a) give the statement to the owner of the building; and
 - (b) give a copy of the statement to the QBCC and the relevant local government.

Maximum penalty—10 penalty units.

- (2) The building industry professional must keep a copy of the building industry professional statement for at least 5 years after the statement is signed.

Maximum penalty—10 penalty units.

- (3) In this section—

relevant local government, for a private building, means the local government in whose local government area the building is situated.

16ZI Building fire safety risk assessment and fire engineer statement

- (1) This section applies if a fire engineer prepares and signs a building fire safety risk assessment, or a fire engineer statement, for a private building for the purposes of section 16X or 16ZL.
- (2) The fire engineer must, within 5 business days after the building fire safety risk assessment or fire engineer statement is signed—
 - (a) give the assessment or statement to the owner of the building; and

[s 5]

- (b) give a copy of the assessment or statement to the QBCC and the relevant local government.

Maximum penalty—10 penalty units.

- (3) The fire engineer must keep a copy of the building fire safety risk assessment or fire engineer statement for at least 5 years after the assessment or statement is signed.

Maximum penalty—10 penalty units.

- (4) In this section—

relevant local government, for a private building, means the local government in whose local government area the building is situated.

Division 4 Miscellaneous

16ZJ Order to give completed combustible cladding checklist (part 1)

If a person is convicted of an offence against section 16Q(1) for the person's private building, the court may, in addition to any other order the court may make, order the person to—

- (a) complete a combustible cladding checklist (part 1) for the building; and
- (b) give a copy of the completed checklist to the QBCC by using the online system.

16ZK Order to obtain building industry professional statement

If a person is convicted of an offence against section 16T(1) for the person's private building, the court may, in addition to any other order the court may make, order the person to—

- (a) obtain a building industry professional statement for the building; and
- (b) give a copy of the statement to the QBCC by using the online system.

16ZL Order to obtain building fire safety risk assessment and fire engineer statement

If a person is convicted of an offence against section 16X(1) for the person's private building, the court may, in addition to any other order the court may make, order the person to—

- (a) obtain, for the building—
 - (i) a building fire safety risk assessment; and
 - (ii) a fire engineer statement; and
- (b) give a copy of the assessment and statement to the QBCC by using the online system.

16ZM Notice about compliance period

- (1) This section applies if—
 - (a) section 16Q, 16T or 16X (each a *relevant section*) applies to an owner; and
 - (b) the QBCC reasonably believes—
 - (i) circumstances causing, or likely to cause, an immediate risk of serious injury or illness have arisen at the owner's private building; and
 - (ii) the circumstances are, or involve, cladding forming part of, or attached or applied to, an external wall or another external part of the building other than the roof.
- (2) The QBCC may give the owner a notice stating

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that the owner must comply with the relevant section within a stated period.

- (3) The stated period may be shorter than the period that would otherwise apply to the owner under this part but must be reasonable in the circumstances.

16ZN Proof of agency

- (1) This section applies if an owner engages an agent to act for the owner to comply with this part.
- (2) Before the agent does an act for the owner to comply with this part, the agent must give to the QBCC, by using the online system, a copy of a proof of agency document for the agency.

Maximum penalty—20 penalty units.

- (3) In this section—

proof of agency document, for an agency, means a document, in the approved form, evidencing the agent's authority to act for the owner.

16ZO Responsibility for acts or omissions of agents

- (1) This section applies in a proceeding for an offence against this part.
- (2) If it is relevant to prove an owner's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by an agent of the owner within the scope of the agent's actual or apparent authority; and
 - (b) the agent had the state of mind.
- (3) An act done or omitted to be done for an owner by an agent of the owner within the scope of the

agent's actual or apparent authority is taken to have been done or omitted to be done also by the owner, unless the owner proves the owner could not have, by the exercise of reasonable diligence, prevented the act or omission.

(4) In this section—

state of mind, of an owner, includes—

- (a) the owner's knowledge, intention, opinion, belief or purpose; and
- (b) the owner's reasons for the intention, opinion, belief or purpose.

6 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

affected private building, for part 4A, see section 16O.

building fire safety risk assessment, for part 4A, see section 16X(1)(b).

building industry professional, for part 4A, see section 16O.

building industry professional statement, for part 4A, see section 16T(1)(b).

combustible cladding, for part 4A, see section 16O.

combustible cladding checklist (part 1), for part 4A, see section 16O.

combustible cladding checklist (part 2), for part 4A, see section 16O.

combustible cladding checklist (part 3), for part 4A, see section 16O.

completed, for part 4A, see section 16O.

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convicted, for part 4A, see section 16O.

fire engineer, for part 4A, see section 16O.

fire engineer statement, for part 4A, see section 16X(1)(c).

new owner, for part 4A, division 2, subdivision 5, see section 16ZC.

online system, for part 4A, see section 16O.

private building, for part 4A, see section 16O.

private entity, for part 4A, see section 16O.

QBCC investigator, for part 4A, see section 16O.

qualified witness, for part 4A, see section 16O.

relevant provision, for part 4A, division 2, subdivision 5, see section 16ZC.

type A construction, for part 4A, see section 16O.

type B construction, for part 4A, see section 16O.

Part 3 **Amendment of State Penalties Enforcement Regulation 2014**

7 Regulation amended

This part amends the *State Penalties Enforcement Regulation 2014*.

8 Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Schedule 1, entry for *Building Regulation 2006*—
insert—

s 16Q(1)

2

10

Building and Other Legislation (Cladding) Amendment Regulation 2018
Part 3 Amendment of State Penalties Enforcement Regulation 2014

[s 8]

s 16R	1	5
s 16T(1)	2	10
s 16U	1	5
s 16W(1)	5	25
s 16X(1)	16	80
s 16Y(1)	1	5
s 16ZA(1)	3	15
s 16ZB(2)	2	10
s 16ZB(3)	2	10
s 16ZD(2)	2	10
s 16ZF(3)	2	10
s 16ZH(1)	1	5
s 16ZH(2)	1	5
s 16ZI(2)	1	5
s 16ZI(3)	1	5
s 16ZN(2)	2	10

ENDNOTES

- 1 Made by the Governor in Council on 26 July 2018.
- 2 Notified on the Queensland legislation website on 27 July 2018.
- 3 The administering agency is the Department of Housing and Public Works.

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