

Building and Other Legislation Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the *Building and Other Legislation Amendment Bill 2013*.

Policy objectives and the reasons for them

The objectives of the Bill are to:

- (1) amend the *Building Act 1975* (BA), *Water Supply (Safety and Reliability) Act 2008* (WS (S&R) Act) and the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQW (D&RR) Act) to reduce red tape and save time and money for applications to build over or near a sewer, water main or stormwater drain (relevant infrastructure); and
- (2) make minor amendments to building and plumbing legislation.

Section 83 of the BA currently provides that a private building certifier must not grant a building development approval for building work that is over or adjacent to a sewer or water main unless consent is obtained under the WS (S&R) Act from the relevant service provider (a local government, South-East Queensland (SEQ) distributor-retailer or other service provider under the WS (S&R) Act).

Section 192 of the WS (S&R) Act makes it an offence to interfere with a water or sewerage service provider's infrastructure without written consent. If a person does not obtain written consent a penalty can be applied. That Act does not provide for a review or appeal if written approval is not provided.

The WS (S&R) Act does not specify the criteria that must be addressed, or the process to be followed, when applying for consent. In addition, it does not have design standards to provide guidance to applicants on whether it is appropriate to build over or adjacent to a service provider's infrastructure. Local governments and service providers often have their own standards for the assessment of applications for building work over or near relevant infrastructure via guidelines or in local planning schemes.

Under the current process, when a building development application involving building over or adjacent to relevant infrastructure is lodged, the building certifier is responsible for assessing whether the application must be referred to the relevant service provider, or a local government acting as the service provider's delegate, for consent. A local government planning scheme may also trigger an additional development application to be lodged and assessed by the local government. This can affect the timely approval of this type of building work and can attract fees that range between \$95 and \$735.

The new process proposed by this Bill will remove the requirement to obtain consent from a service provider and the need to lodge a development application under a local government planning scheme. This will significantly reduce costs and delays for applicants. It will also provide greater certainty and consistency by providing for assessment against a single State-wide standard.

The Bill also includes certain minor and consequential amendments to the BA and the *Plumbing and Drainage Act 2002* (PDA).

Achievement of policy objectives

To achieve policy objectives, this Bill will:

- Amend the BA to remove the requirement for a private building certifier to ensure that consent from a service provider has been obtained prior to approving building work that is over or adjacent to relevant infrastructure.
- Amend the WS (S&R) Act to remove the requirement to obtain the service provider's written consent where a person carries out building work on a lot containing relevant infrastructure of the service provider (a sewer or water main). Consequently the offences currently in section 192(1) and (2) will not apply.
- Amend the SEQW (D&RR) Act to allow delegation of concurrence agency functions from the distributor-retailer to the local government.
- Amend the BA and PDA to add appropriate references to the *City of Brisbane Act 2010* (CBA) where there are existing references to the LGA.

Through associated regulatory amendments, the proposed legislative scheme will also facilitate:

- the introduction of a new mandatory part to the Queensland Development Code (QDC MP 1.4), which will provide performance requirements and acceptable solutions for all building work over or near relevant infrastructure. QDC MP 1.4 will allow this type of building work to be assessed against consistent, State-wide standards, rather than individual local government planning schemes or service providers' technical documents.

QDC MP 1.4 will provide acceptable solutions for class 1 and 10 buildings and structures. A building development application that does not comply with the acceptable solutions for these classes of buildings or which relates to class 2 to 9 buildings will be referred to a concurrence agency for response. The relevant local government, SEQ distributor retailer or other service provider will be stated as a concurrence agency under the *Sustainable Planning Regulation 2009* (SPR) for these building applications.

- the ability to appeal decisions of the assessment manager and concurrence agency advice to the Building and Development Dispute Resolution Committees (BDDRC) under QDC MP 1.4.

The BDDRC provides a quick and cost effective dispute resolution service for applicants dissatisfied with decisions concerning their building development application. The proposed legislative scheme will allow the BDDRC to hear appeals on building over or near relevant infrastructure, with a limited right of further appeal to the Planning and Environment Court.

Alternative ways of achieving policy objectives

Amendments to the BA, WS (S&R) Act and SEQW (D&RR) Act

There are no effective alternative ways of achieving the stated policy objective of a cost effective approval and appeals process.

Minor amendments to the BA and PDA

There is no effective alternative as these amendments are minor and consequential.

Estimated cost for government implementation

The State Government will incur no additional cost in the implementation and support of the proposal to streamline assessment of this type of building work.

Any costs associated with the BDDRC as the appeal body at first instance will be funded through existing resources.

Consistency with fundamental legislative principles

The proposed amendments are consistent with fundamental legislative principles.

Consultation

Amendments to the BA, WS (S&R) Act and SEQW (D&RR) Act

There is widespread stakeholder support for the Bill.

The Bill was developed in consultation with Queensland Treasury and the Departments of the Premier and Cabinet, Energy and Water Supply and State Development, Infrastructure and Planning.

Extensive consultation has occurred with industry and the community over the last two years on the proposed approval process and the development of QDC MP1.4. This consultation included industry bodies such as the Housing Industry Association, Queensland Master Builders Association, Australian Institute of Building Surveyors, Queensland Water Directorate, Local Government Association of Queensland and a range of service providers including Unitywater, Queensland Urban Utilities and individual local governments.

Consistency with legislation of other jurisdictions

Amendments to the BA, WS (S&R) Act and SEQW (D&RR) Act

A review of the framework for assessing building work over or near relevant infrastructure in other States/Territories did not reveal a consistent national approach.

Notes on Provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Building and Other Legislation Amendment Act 2013*.

Clause 2 states that the Bill is intended to commence on proclamation.

Part 2 Amendment of BA

Clause 3 provides that part 2 amends the BA.

Clause 4 amends section 83 of the BA by removing the prohibition on private certifiers from granting a building development approval if the building work is over or adjacent to a sewer or water main until consent under section 192 of the WS (S&R) Act has been granted for the work. Under the proposed legislative scheme, private certifiers may grant such building development approvals where the proposed building work complies with the Queensland Development Code MP 1.4. Section 36 of the BA will apply in relation to any transitional issues concerning the application of the proposed scheme.

Part 3 Amendment of SEQW (D&RR) Act

Clause 5 provides that part 3 amends the SEQW (D&RR) Act.

Clause 6 amends section 53 which provides for the power of a distributor-retailer to delegate their functions. The amendment to section 53 enables a distributor-retailer to delegate its functions as a concurrence agency (under proposed amendments to the *Sustainable Planning Regulation 2009*) for a 'relevant development application' to its relevant participating local government. A 'relevant development application' is defined in subsection (4) as meaning a development application for carrying out building work for a building or structure on a lot that contains, or is adjacent to a lot that contains, a service provider's infrastructure.

Part 4 Amendment of WS (S&R) Act

Clause 7 provides that part 4 amends the WS (S&R) Act.

Clause 8 amends section 192 of the WS (S&R) Act by adding new subsections (3) and (4). Subsections (1) and (2) of section 192 each create an offence related to interfering with a water service provider's infrastructure without written consent of the service provider. The new subsections will make it clear that building work for a building or structure on a lot that contains, or is adjacent to a lot that contains, 'relevant infrastructure' of a service provider, is excluded from the scope of the offence provisions in subsections (1) and (2). The 'relevant infrastructure' is defined in subsection (4) as meaning a sewer or water main.

Part 4 Minor and consequential amendments of Acts

Clause 9 provides that the schedule to clause 9 amends the Acts it mentions.

The schedule makes minor and consequential amendments to the BA and the PDA. The amendments concern references in the BA and the PDA to the LGA or specific provisions in the LGA. The effect of the amendments is to include a corresponding reference in each such case to the CBA or the equivalent provision in the CBA.

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