Building over or near relevant infrastructure

Information for local governments

From 1 November 2013, new laws took effect for building work proposed to be undertaken over or near relevant infrastructure. This includes sewers, water mains, stormwater drains or combined sanitary drains.

The new standard delivers a consistent state-wide approach, and will reduce duplication.

Local governments remain an important part of the approval process for this infrastructure.

New approvals process

This type of building work must now be assessed against Queensland Development Code Mandatory Part 1.4 (MP 1.4)—Building over or near relevant infrastructure. Consent from the relevant service provider is no longer required under section 192 of the *Water Supply (Safety and Reliability) Act 2008* (WS (S&R) Act) for building work regulated under MP 1.4.

Note: This information should be read with the general fact sheet about MP 1.4.

Requirements under local planning instruments

Many local government planning schemes and other planning instruments currently include requirements relating to building over or near relevant infrastructure.

The introduction of a single consistent state-wide standard (MP 1.4) will eliminate the need for separate planning requirements. As a result, any provisions of a local planning instrument that attempt to regulate building work over or near relevant infrastructure will no longer have any effect. This means that an applicant will no longer be required to lodge a development application for assessment against such provisions in a planning instrument.

The relationship between local planning instruments and the *Building Act 1975* are outlined in Section 78A of the *Sustainable Planning Act 2009* (SPA).

Concurrence agency role

The *Sustainable Planning Regulation 2009* (SPR) has been amended to prescribe relevant service providers as a concurrence agency for the purposes of MP 1.4.

Relevant service providers include sewerage service providers and water service providers under the WS (S&R) Act and the owner of a stormwater drain. Many local governments fall under these categories.

The process

Building development applications must be referred to a concurrence agency where:

- the work does not comply with an acceptable solution for MP 1.4; or
- the work is for a class 2-9 building located less than five metres from relevant infrastructure (as MP 1.4 does not provide acceptable solutions for these building classes).

Concurrence agencies have 20 business days to assess the application and provide a response. A local government can charge the prescribed fee for providing this service.

Note: Where a local government is the assessment manager for a building development application, and also has jurisdiction as a concurrence agency, section 249 of SPA will apply. This provision states that the local government will no longer be a concurrence agency but that its concurrence agency jurisdiction will instead form part of its assessment manager role.

Assessing the application

The concurrence agency will need to consider the application based on their prescribed jurisdiction under the SPR—that is, whether the proposed building or structure complies with the applicable performance criteria of MP 1.4 in relation to their relevant infrastructure.

As MP 1.4 is a performance based code, there are a number of ways that an applicant may satisfy the performance criteria.

Concurrence agencies should not assess the application based on restrictive criteria or internal technical standards. If the applicant can demonstrate that the relevant performance criteria have been met, the concurrence agency should approve the application without any unnecessary conditions.

Concurrence agency response as part of an earlier application

Under section 271 of the SPA, a local government may give a referral agency response before a development application is made.

The referral agency response will then be considered as part of the building development application when it is lodged.

Approved Form 32

A Form 32 has been introduced to give non-local government sewerage service providers the same information they once received. Private building certifiers are now required to provide a Form 32 to help the service provider manage their inspection, maintenance and replacement duties.

Local government service providers do not require a Form 32. This is because they receive information about the building work as part of the approval documents lodged with them by a private building certifier. In some cases, the local government may also be the assessment manager for the building development application.

Appeals

Appeals about decisions related to MP 1.4 can be made to the Building and Development Dispute Resolution Committees. Under the SPA, a person may appeal a decision to impose conditions or a refusal to grant a building development approval.