



# Building Codes Queensland Update

AIBS Roadshow Seminars  
19 April – 30 April 2010



Department of Infrastructure and Planning

**Toward**   
Tomorrow's Queensland

 **Queensland**  
Government



## Presentation structure

### *Building issues - Part One*

- Sustainable buildings
- Lapsing of Building Development approvals
- Disengagement of private certifiers
- Enforcement provisions
- Local Government designation of bushfire prone areas
- Registration and licensing for alternative solutions – fire safety



### *Sustainable Planning Act 2009 (SPA) - Part Two*

- Properly made applications
- Deemed approvals
- Section 86
- Schedule 4 exemptions (Sustainable Planning Regulation)
- Compliance assessment
- Building and Development Committees



## Sustainable buildings - Overview

- Queensland sustainable building policies are leading Australia
- Queensland is one of the first states to adopt the Building Code of Australia (BCA) **6 star** requirements for **Class 1, 4 and 10** buildings from **1 May 2010**
- Since **1 March 2010**, **class 2** sole occupancy units (SOU) have been required to meet **5 star** requirements in Queensland. 6 Star announcement not yet made.
- From **1 May 2010**, new BCA requirements for **class 3 and 5 to 9** buildings apply in Queensland

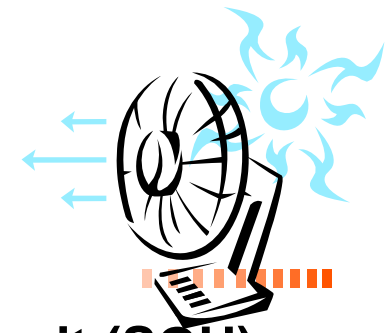
## Sustainable buildings – 6 star for class 1 and 10 buildings

- Starts on 1 May 2010 in Queensland
- Minister held forums in Cairns and Toowoomba to discuss implementation options
- Queensland Development Code (QDC) provides alternative compliance options:
  - Suspended floor insulation not required for **zones 1 and 2**
  - 1 star credit for minimum **1 kW** solar photovoltaic system or outdoor living area with a fan
  - **0.5** star credit for outdoor living area with no fan
  - Minimum **4.5** stars for building fabric in **zones 1, 2 and 5**
  - Minimum **5 stars** for building fabric in **zone 3**
  - Lighting
  - Hot water systems
  - BCA 2009 deemed to satisfy and one star credit



## Sustainable buildings - 5 star for class 2 SOU

- Started on **1 March 2010** in Queensland through QDC
- Average **5 star**, minimum **4 star** for SOUs
- **BCA 2009, Section J** applies to **non sole occupancy unit (SOU)** parts of **class 2** buildings
- QDC provides alternative compliance options:
  - **1 star** credit for outdoor living area with fan in **zones 1 and 2**
  - **0.5 star** credit for outdoor living area with no fan in **zones 1 and 2**
  - Air conditioners must automatically shut down if door leading to outdoor living area from conditioned space remains open for more than **one minute**
  - Out door living area needs only **one** side open
  - Lighting 80% SOU





## Sustainable buildings - Other Queensland measures

- “Ban the banners” from 1 January 2010
- Sustainability declarations from 1 January 2010
- Electric hot water phase out from 1 January 2010
- Mandatory electricity sub-meters for class 2 and 5 buildings from 1 January 2010
- End of trip facilities code being developed

## Other Queensland developments

- New swimming pool safety laws – leading Australia
  - Stage one started 1 December 2009
  - Stage two proposed to start from 1 December 2010
    - Regulatory Impact Statement (RIS) released until 16 May 2010
    - 1<sup>st</sup> Bill in Parliament
- Transport noise code being developed
- New temporary accommodation building code to begin 1 July 2010
- *Building and Other Legislation Amendment Act 2009*
- New duplex code and changes to Sustainable Planning Regulation 2009, Schedule 4





## Building issues - Lapsing of building approvals

- Building development applications are subject to the Integrated Development Assessment System (IDAS) process
- A Building development approval lapses if it does not substantially start within timeframes
- Substantially start? – facts of each case
- Previously section 3.5.21 under *Integrated Planning Act 1997* (IPA)
- Now section 341(3) of SPA





## Building issues - Lapsing of building approvals

Section 341(3) of SPA provides:

To the extent a development approval is for development other than a material change of use of premises or reconfiguring a lot, the approval lapses if the development does not substantially start within the following period (also the ***relevant period***)—

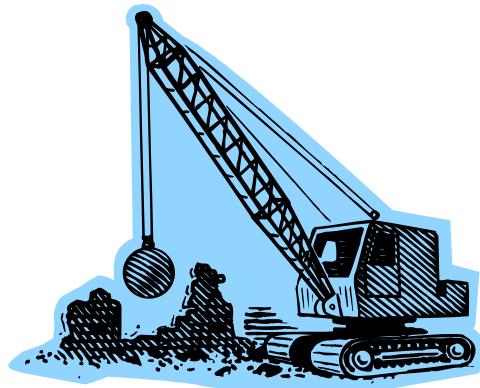
- (a) 2 years starting the day the approval takes effect;
- (b) if the approval states a different period from when the approval takes effect—the stated period.

## Building issues - Lapsing of building approvals

Section 94 of the *Building Act 1975* (BA) provides:

A **condition** of a building development approval may require the development or aspect of the development to be completed by a particular time (the ***condition time***)

However, this does not apply to a building development approval for building work to which the demolition/removal completion condition applies.





## Building issues - Lapsing of building approvals

### When will a building development approval lapse

An building development approval will lapse if:

- The assessment manager gives the ‘owner of the building’ a reminder notice (s95); and
- The time in the reminder notice for the completion passes; and
- The development is not completed

# Building issues - Lapsing of building approvals

## Reminder Notice

The reminder notice (recommended form 57) must:

- Be given no more than 6 months but at least 3 months before lapsing; and
- State the condition, lapsing time (i.e. date) and state that the building development approval will lapse if the development is not completed



Note:

- After an building development approval has lapsed, the private building certifier must give the local government a copy of the reminder notice within 5 business days (s149)

## Building issues - Lapsing of building approvals

### Reminder notice not given or is given late

- If the reminder notice is not given, the approval will not lapse (s95 (1))
- The building owner will always be provided with a 3 month reminder period (e.g. if the reminder notice is given within 1 month of the condition time, the new lapsing date will be 2 months after the original condition time)
- If a reminder notice is given and before the lapsing time an extension of lapsing time may be requested (s96)
- If the assessment manager is a private certifier, and a further extension of the lapsing time is requested, the private certifier must consult the local government (s97)



## Building Issues - Disengagement of private certifiers

### Who can discontinue an engagement

- Any party to an engagement of a private certifier may, under the engagement discontinue the engagement (s144)
- The party takes what ever action is required under the engagement to discontinue it
- No discontinuance until all parties to the engagement have been given notice (approved form 22)
- Parties to the engagement are considered the applicant and the private building certifier



## Building Issues - Disengagement of private certifiers

### Requirements for disengagement:

- Within 5 business days the private certifier must notify the local government (s144)
- Private certifier, on discontinuance, must give the building owner documents within 5 business days (s148)
- Private certifier, on discontinuance or lapsing, must give local government documents (s149)

*Note: Disengagement procedure is currently being reviewed by DIP*

# Enforcement provisions – Building Act

## Chapter 9 – by Local Government

- Section 247 – show cause procedure
- Section 248 – enforcement notices
- Section 250 – appeals
- Section 252 – Local Government action

Private certifier enforcement role – next slide



**Building Act 1975**

## Enforcement provisions – Building Act

- For section 248, a reference to a local government includes a reference to a private certifier (class A) performing functions under subsection (1)(c)
- However, subsection (1)(c), (2) and (3) apply only until the giving of a final inspection certification for the building work or a certificate of classification for the building



## Enforcement provisions – Building Act

- Chapter 9 has restrictions, e.g. dangerous, dilapidated, unfit for use of occupation, filthy, etc
- Show cause must be used – 247
- Not required if dangerous – 248 (4)
- Enforcement where non-compliance with a particular part of the Building Act – 248(2)
- Enforcement notice under 248 is a notice for SPA (section 590)





## Enforcement provisions – SPA

- Was 4.3.18 to 4.3.17 of IPA
- Now 588 – 596 of SPA
- Procedure applies to BA enforcement notices
- Requirements for show cause and enforcement notices remain the same
- However, section 588 (3) for show cause notice flexibility (next slide)

## Enforcement provisions – SPA

Section 588 (2) of SPA provides:

Despite subsection (2), the assessing authority need not give a show cause notice if it reasonably considers it is not appropriate in the circumstances to give the notice.

*Example –*

*An assessing authority might not give a show cause notice if it considers urgent action is necessary to address a danger to public health or safety or giving the notice would be likely to adversely affect the effectiveness of the enforcement notice.*

In Chapter 7, part 3, divisions 2 and 3 a reference to an assessing authority includes a reference to a private certifier (class A) performing functions under subsection (1)(c).



## Enforcement provisions – SPA

Under SPA (schedule 3 – Dictionary), assessing authority is defined as:

- (c) for assessable development for which a private certifier (class A) is, under the Building Act, chapter 6, engaged to perform private certifying functions under that Act—the private certifier or the local government



## Enforcement provisions – SPA

Section 596 of SPA provides:

- (1) If a person to whom an enforcement notice is given contravenes the notice by not doing something, the assessing authority, if it is not a local government, may do the thing.

*Note—*

*If the assessing authority is a local government, it has similar powers and may recover its costs under the Local Government Act, section 142.*

- (2) Any reasonable costs or expenses incurred by an assessing authority in doing anything under subsection (1) may be recovered by the authority as a debt owing to it by the person to whom the notice was given.

## Local Government designation of bushfire prone areas

### *Building Regulation 2006 s12*

- A local government may, in a local government planning instrument, designate all or part of its area as a designated bush fire prone area for the BCA or QDC.
- The provisions of the BCA or QDC that apply to a designated bushfire prone area apply for any building assessment work that relates to the area.
- State planning policy (SPP) 1/03 – Mitigating the adverse impacts of flood, bushfire and landslide 1.0





## Building assessment provisions for bushfire prone areas

### Current requirement

- Queensland Development Code MP2.4 – *Buildings in bushfire prone areas* which adopted Australian Standard AS3959 – 2009 - has applied since 1 October 2009

### Proposed amendment

- Building Code of Australia (2010) which references Australian Standard AS3959 – 2009 (Amendment 1) will apply from 1 May 2010



## Registration and licensing for alternative solutions – fire safety

- Generally for practitioners involved in the design of alternative solutions involving fire safety, they will be required to be either appropriately registered with the Board of professional Engineers of Queensland (BPEQ) or, from 1 January 2011, licensed by the Queensland Building Services Authority (QBSA)
- If the person formulates an alternative solution involving fire safety which includes a professional engineering service, they must be registered with the BPEQ
- If the person formulates an alternative solution involving fire safety which does not include a professional engineering service, they must be licensed as a fire safety professional with the QBSA



## Registration and licensing for alternative solutions – fire safety

- If the person inspects or reports on buildings against a fire performance legislation , such as the BCA or if they certify, test or inspect fire protection systems, they must be licensed as a fire safety professional with the BSA
- However, under the *Queensland Building Services Authority Regulation 2003*, s 5(1)(2e) this does not affect a building certifier undertaking a building certifying function
- The functions of a building certifier under the BA include the assessment, approval and inspection of building work. This building work may involve alternative solutions relating to fire safety. It is acceptable for the building certifier to assess alternative solutions within their level of competence and expertise



## Registration and licensing for alternative solutions – fire safety

- If a building certifier formulates or provides an alternative solution relating to fire safety, they must have either the appropriate registration from the BPEQ or, from 1 January 2011, licensed by the QBSA
- Building certifiers are reminded that formulating or providing an alternative solution for a building development application they are responsible for is likely to be a conflict of interest under the BA and would therefore be unlawful



# Short break?



## Presentation structure

### *Sustainable Planning Act 2009 (SPA) – Part Two*

- Properly made applications
- Deemed approvals
- Section 86
- Schedule 4 exemptions (Sustainable Planning Regulation)
- Compliance assessment
- Building and Development Committees

First we had integration under the .....



## Integrated Planning Act 1997

Reprinted as in force on 8 October 2009

Then came the .....



## Sustainable Planning Act 2009

Act No. 36 of 2009

## SPA - what's changed

### *Evolution, not revolution*

- Focus on sustainable outcomes
- More than 220 changes
- Restructured and renumbered
- Schedules moved to regulation or statutory guidelines (e.g. process for making or amending a planning scheme)



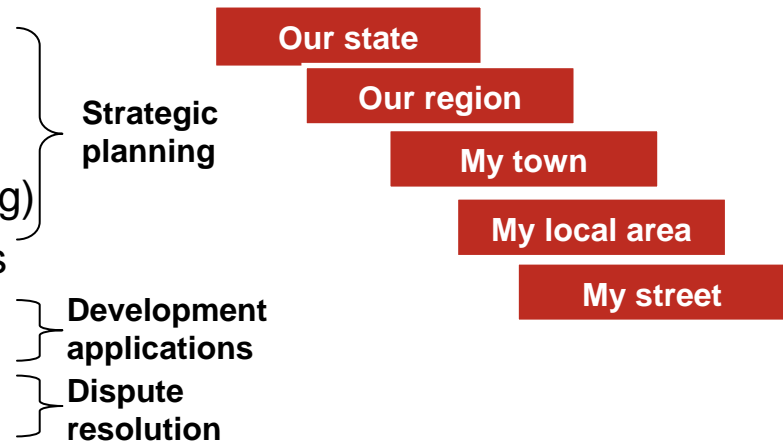
## SPA shifts the focus

- 25-year strategic planning focus
- State, regional, and local
- Risk management
- Development management
- Planning partnerships
- Sustainable outcomes



# Structure of the Act

- Chapter 1 - Preliminary
- Chapter 2 - State planning instruments
- Chapter 3 - Local planning instruments
- Chapter 4 - Planning partnerships (master planning)
- Chapter 5 - Community infrastructure designations
- Chapter 6 - IDAS
- Chapter 7 - Appeals, offences and enforcement
- Chapter 8 - Infrastructure
- Chapter 9 - Miscellaneous
- Chapter 10 - Transitional provisions
- Schedule 1 - Prohibited development
- Schedule 2 - Consequential amendments
- Schedule 3 - Dictionary



# Chapter 1 - Preliminary

- Purpose = ecological sustainability
- Addresses contemporary issues e.g. climate change, non-renewable resources, housing affordability and urban congestion





## Chapters 2 & 3 – Planning Instruments

- Chapter 2 – State planning instruments
- Chapter 3 – Local planning instruments





## Chapter 3 – Local planning instruments

- Planning schemes
- Temporary local planning instruments
- Planning scheme policies



## Chapter 4 – Planning partnerships

- Clear relationships with other planning instruments
- Must reflect standard planning scheme provisions
- Streamlined processes for making structure plans (statutory guideline)

# Chapter 6 - IDAS

## *Application stage*

- Electronic applications
- Mandatory supporting information
- Properly made applications



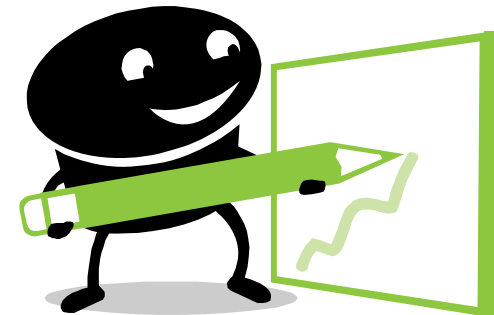


## Properly made applications

- Under IPA, it was possible to submit a development application with little or no detailed information
- Could also accept an application ‘as properly made’
- Under SPA assessment managers no longer have the discretion
- Approved forms now specify mandatory supporting information to be provided with the application

## Properly made applications (cont)

- Form 1 and 2 required for building work
- Plans, etc required as mandatory now
- Feedback that form 1 largely not relevant
- Review of forms in 2010
- Welcome contributions on forms





## Deemed approvals (sections 330 – 333)

- Exemptions
- Deemed approval notice
- Applicant gets what they asked for
- Decision notice can be given
- Standard conditions



## Deemed approvals

- Only applies to code assessable applications
- Do not apply in some circumstances
- Does not apply to a building development applications



## Deemed approvals – Web resources

<http://www.dip.qld.gov.au/resources/factsheet/standard-conditions-deemed-approvals.pdf>

<http://www.dip.qld.gov.au/resources/factsheet/deemed-approvals.pdf>

# Compliance assessment

- Development, documents or works
- Technical, objective, quick tick-and-flick
- Compliance assessor – State, local government or nominated entity
- Simple process
- No refusal
- Deemed approval





## Section 86 – inconsistencies with planning / building

- Clarifies that planning schemes cannot regulate building work under the BA (unless permitted)
- Where inconsistent, the BA prevails and planning scheme of no effect
- Alternative planning scheme provisions permitted under section 33 of the BA
- Section 32 of the BA and sections 6 to 13 of the *Building Regulation 2006* prescribe matters e.g. flooding, bushfires and parts of QDC MP1.1 and 1.2

## Schedule 4 – SPR (New housing approvals process)

- Fewer MCUs for detached houses, duplexes and associated buildings (e.g. sheds and carports) in residential areas from 18 December 2009
- Building development application still required
- Applies to new houses and repairs/renovations
- Only 1 detached house or duplex per premises (not granny flats)
- Local governments can still require self-assessment
- Exemption does not apply if there is a relevant overlay that affects a lot (other than a bushfire overlay)
- Exemption does not apply if there is an overlay and premises is more than 2000m<sup>2</sup>

***No development permit for the MCU***

## Schedule 4 – update

- Some Local Governments concerned about duplexes
- ‘Opt in’ adopted on 26 March 2010, by resolution
- New QDC MP1.3 applies
- Letter sent to all local governments
- New referral power where previously elevated to code or impact
- Note: section 86 on inconsistent elevation





## Chapter 7 – Appeals, offences & enforcement

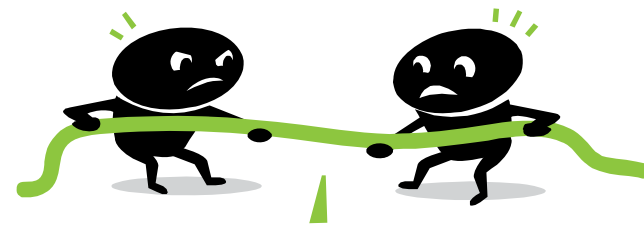
- Increased discretionary powers for the Planning and Environment Court
  - commercial competitors
  - procedural non-compliance
- Expanded jurisdiction of Building and Development Dispute Resolution Committees
  - declaratory powers
  - housing appeals
  - infrastructure charging disputes (since July 2008)
- Greater discretion to proceed directly to enforcement notice

## Committees established Jurisdiction

Section 526 of SPA, formerly section 4.2.7 of IPA provides that:

“An appeal to a building and development committee under this division may only be about—

- (a) a matter under this Act that relates to the *Building Act 1975*, other than a matter under that Act that may or must be decided by the Building Services Authority or the *Plumbing and Drainage Act 2002*; or
- (b) a matter that under another Act may be appealed to a building and development committee; or
- (c) a matter prescribed under a regulation”.



## PSP expansion

- Appeals about infrastructure contributions under a Planning Scheme Policy (PSP)
- If “dissatisfied with the calculation of the amount of the contribution”
- “Error in the calculation of the amount”
- Expansion of PIPs related appeals



## Expansion - Declarations

- Properly made applications (s510)
  - Within 20 business days of receiving notice (s266).
  - Not about “written consent” or a State resource prescribed under a Regulation.
- Acknowledgement notices (s511)
  - Within 20 business days of receipt.
  - Only for a MCU for a “prescribed building”.
- Lapsing of request for compliance assessment (s512)
  - whether the request has lapsed under the Act.
- Change to development approval (s513)
  - Whether a proposed change to the approval is a permissible change.
  - Only for a MCU for a “prescribed building”.

## Expansion – MCUs for prescribed buildings



- Material change of use of premises that involves the use of a “prescribed building” (s519).
- “Prescribed building” defined in SPA:
  - class 1 building (single detached buildings e.g. houses and townhouses) ; or
  - class 10 building (e.g. sheds and carports), other than a class 10 building that is incidental or subordinate to the use, or proposed use, of a building classified under the BCA as a class 2, 3, 4, 5, 6, 7, 8 or 9 building.
- Does not apply is the application requires impact assessment and properly made applications were received.
- Appeals on decision relating to extension for development approval (s520).
- Appeal about decisions relating to permissible changes (s521).

## Expansion – Conditions of a DA for class 2 buildings

- Only for an MCU for a class 2 building (s522):
  - not more than 3 storeys; and
  - not more than 60 sole occupancy units.
- Only relates to conditions of the Development approval.
- Does not apply is the application requires impact assessment and properly made applications were received.
- Storey and Sole Occupancy Unit – defined (s522(5)).





## Expansion – Compliance assessment

- Compliance assessment - new process (chapter 6, part 10)
- Appeal against decision on request for compliance assessment (s523)
  - By a person given an action notice about a request for compliance assessment of development, a document or work
- Appeal against condition imposed on compliance permit or certificate (s524)
- Appeals against particular decisions about compliance assessment (s525)
  - notice of a decision on a request to change or withdraw an action notice
  - notice about a decision to refuse to change a compliance permit or compliance certificate
- Concurrent jurisdiction with the P&E Court (s468 - 470)



## Contact – Building Codes Queensland

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