

Guide to building provisions in planning schemes



Matters a planning scheme *can* include

Sections 32 and 33 of the *Building Act 1975 (BA)* and the *Building Regulation 2006* provide for the matters a planning scheme may include. These matters include:

- ✓ Alternative boundary clearances and site cover provisions for class 1 and 10 buildings and structures e.g. front, side and rear boundary setbacks and the maximum area covered by all buildings and structures.
- ✓ Variations to certain matters for class 1 and 10 buildings and structures provided for in parts MP 1.1, MP 1.2 and MP 1.3 of the Queensland Development Code (QDC). These include:
 - ✓ heights of buildings related to obstruction and overshadowing
 - ✓ siting and design of buildings to provide visual privacy and adequate sight lines (for corner blocks)
 - ✓ on-site car-parking requirements
 - ✓ outdoor living spaces.
- ✓ Designating bushfire prone areas for the Building Code of Australia or QDC
- ✓ Designating a natural hazard management area (flood) and declaring a defined flood level, maximum flow velocity of water, inactive flow or backwater area, freeboard that is more than 300 millimetres or finished floor level of class 1 buildings built in all or part of the designated flood area.

- ✓ Designating transport noise corridors for the purpose of QDC MP 4.4.
- ✓ Additional end-of-trip facilities to those imposed by QDC MP 4.1 e.g. bicycle parking and storage facilities, locker facilities, change rooms, showers, sanitary compartments, wash basins and mirrors.

Useful information

There are a number of ways building assessment provisions (BAPs) can be included in a planning scheme. This can be through tables of assessment for building work, an overlay or codes. Part 1.6(4) of the Queensland Planning Provisions v3 (Module A) is intended to provide a quick reference for building certifiers to enable them to easily locate the BAPs within a planning scheme.

Building matters designated or defined in a local planning instrument are automatically picked up as part of the BAPs. Local government may also be prescribed as a referral agency for matters under Schedule 7 of the *Sustainable Planning Regulation 2009*.

Under section 271 of the *Sustainable Planning Act 2009* (SPA), a local government may give a referral agency response before a development application is made. The response will then be considered when the building application is made. A local government can consider giving a concurrence agency response as part of an earlier development application.

Provisions to be aware of when including matters in a planning scheme

- SPA section 78A—states that a local planning instrument (which includes a planning scheme) **must not** include provisions about building work to the extent the building work is regulated under the building assessment provisions (BAPs) unless permitted under the BA. Section 78A must be read in conjunction with sections 32 and 33 of the BA (see above).
- BA section 30 states what the BAPs are.
- BA section 31(4) states that a local planning instrument must not include provisions about building work, to the extent the building work is regulated under a BAP. The primary purpose of these sections is to avoid duplication in assessment processes.



Matters a planning scheme *cannot* include

1. Provisions found in the current parts (unless specifically permitted) of the QDC. These include:

- ✗ Part 1.4 Building over or near relevant infrastructure (sewers, water mains, stormwater drains and combined sanitary drains)
- ✗ Part 2.0 Fire safety (for budget accommodation buildings and residential care buildings)
- ✗ Part 3.0 Special buildings
- ✗ Part 4.0 Building sustainability
- ✗ Part 5.0 General health, safety and amenity
- ✗ Part 6.0 Maintenance of buildings

2. Provisions found in the Building Code of Australia (BCA)

Generally, the following matters in the BCA are BAPs (this list is not exhaustive) and these cannot be included in a planning scheme unless permitted by the BA:

- ✗ The structural stability of the building (e.g. footings). This includes the structural resistance that materials and forms of construction (e.g. slab on ground) must achieve to withstand floods, cyclones, landslip, earthquakes, etc.
- ✗ Fire safety and fire resistance of a building including the separation distances between buildings, fire protection to external walls (including any openings such as windows) and the splitting up of the internal spaces of the building into separated fire compartments.
- ✗ Fire safety standards for buildings constructed in bushfire prone areas. Matters about the construction of buildings, including building orientation, boundary clearance requirements and distances of buildings or structures from vegetation to address a bushfire hazard.
- ✗ Fire safety equipment that must be installed in a building including fire fighting equipment (e.g. fire hydrants, hose reels, portable fire extinguishers, etc), smoke hazard management (e.g. smoke detectors and alarms) and emergency lighting and signs.
- ✗ Lift installations for emergency egress, disability access etc.
- ✗ The provision of access and facilities for people with disabilities from the point of entry of a site up to, and within, a building. This includes the number and design of accessible parking spaces on a site.
- ✗ Damp and weatherproofing, sanitary facilities, room sizes, light and ventilation, sound insulation and the ability to resist the effects of termites.
- ✗ Structures that are ancillary to the main use of the building including minor structures (swimming pools, vaults, cool rooms), heating appliances (fireplaces, flues and chimneys), and atrium construction.
- ✗ Energy efficiency standards that apply to the construction of a building. For example, standards that specify the thermal resistance (star rating) of a building or material, ventilation requirements, orientation of the building, the provision of shading devices (where not for privacy) etc.
- ✗ Telecommunications facilities within a building.
- ✗ The maintenance of equipment in buildings.

For more information, contact:

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Summary of guiding principles

- Planning schemes set out whether development can occur in an area.
- Building assessment provisions (BAPs) detail how to build.
- It is generally not appropriate for BAPs to be included in a planning scheme.
- Remember – including BAPs in a local planning instrument is only permitted in exceptional cases.