



Building newsflash number 486

Building work under the *Mineral Resources Act 1989* and the *Petroleum Gas (Production and Safety) Act 2004*.

Purpose

To advise on the application of the Queensland Development Code (QDC) Mandatory Part (MP) 3.3 Temporary Accommodation Buildings and Structures, and the assessment of building work carried out under the *Mineral Resources Act 1989* (MRA) and the *Petroleum Gas (Production and Safety) Act 2004* (PGA) .

Background

The QDC Temporary Accommodation Buildings and Structures was developed to provide a uniform and acceptable standard for temporary accommodation buildings. The code applies to new temporary accommodation buildings and to existing lawful temporary accommodation buildings which are to be moved or relocated.

There appears to be some uncertainty about how the QDC applies to development carried out under the MRA and the PGA.

Legislation

Mineral Resources Act 1989
Petroleum Gas (Production and Safety) Act 2004
Building Act 1975
Sustainable Planning Act 2009
Sustainable Planning Regulation 2009
Queensland Development Code

Interpretation

Mineral Resources Act 1989

All building work under the BA and carried out under the MRA is self-assessable but the work must still comply with the applicable codes (refer to section 236 of the *Sustainable Planning Act 2009* (SPA)) including the QDC.

Section 319 (1) of the MRA states that, subject to subsections (2) and (3), the Planning Act, i.e. the SPA, does not apply to development authorised under this Act.

Section 319 (3) states that, for applying the Planning Act in relation to the *Building Act 1975* (BA) -

- a) the Planning Act applies to building work, as defined under that Act, forming part of development authorised under this Act, including development authorised under a mining tenement; and
- b) the building work is taken to be self-assessable building work for the BA, section 21.

This means all building work, including work associated with temporary accommodation buildings, on mining leases and tenures under the MRA, is self-assessable (i.e. does not require a building development approval).

However, under section 236 of the SPA, self-assessable development must still comply with all applicable codes. The building assessment provisions specified in section 30 of the BA are applicable codes for building work. This includes mandatory parts of the QDC, such as MP 3.3 Temporary Accommodation Buildings and Structures.

The QDC applies if the building work associated with temporary accommodation is carried out on a mining lease or tenure under the MRA.

Petroleum Gas (Production and Safety) Act 2004

All building work under the BA and carried out under the PGA is assessable development and must be issued with a development permit before the work commences.

Section 232 (1) of the SPA states that a regulation may prescribe that development is self-assessable development or development requiring compliance assessment or assessable development.

Section 9 (1) of the Sustainable Planning Regulation 2009 (SPR) determines what types of development are assessable development or self-assessable development for section 232 (1) of the SPA. For building work, all work is assessable development unless the BA determines it to be self-assessable or exempt (refer to Schedule 3 Part 1, Table 1 and Schedule 3, Part 2 Table 1 of the SPR). Building work carried out under the PGA is not referenced in Schedule 3 mentioned above and therefore it is assessable development.

Offence provisions of the Sustainable Planning Act

Under the SPA, it is an offence to carry out assessable development without an approval (see section 575). It is also an offence to carry out self-assessable development that is not in accordance with the applicable codes (see section 574). An applicable code for temporary accommodation is QDC MP 3.3.

If the building work is assessable development, it is the responsibility of the building certifier to ensure the work complies with the applicable codes.

If a private certifier has not been engaged for the work, it is the responsibility of the local government in the area to ensure the assessable or self-assessable work complies with the applicable codes.

If the local government is made aware that an offence may be being committed, for example, by self-assessable building work not being carried out in accordance with QDC MP 3.3, it has jurisdiction and to take appropriate enforcement action..

Contact for further information

Department of Local Government and Planning

Building Codes Queensland Division

tel +61 7 3239 6369

buildingcodes@dlgp.qld.gov.au

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