



Building newsflash number 420

New approval processes for houses and duplexes

Purpose

To advise the Sustainable Planning Regulation 2009 has been amended to allow local governments to opt in to the new approval process for duplexes. The Building Regulation 2006 has also been amended to adopt a new mandatory part of the Queensland Development Code (QDC) for duplexes.

Background

The Sustainable Planning Regulation 2009 (SPR) introduced a new approval process for houses and duplexes in residential zones on 18 December 2009 so that only a building application is required in certain circumstances.

Through this process, building applications processed by a building certifier (private or local government employed) are referred to local government for consideration of planning matters as appropriate. For example, councils may require referrals for setbacks, height and other amenity issues set under resolutions.

The process allows minor planning aspects of applications to be assessed without requiring a separate planning approval. This reduces approval time frames and costs. Generally, building applications are processed more quickly than planning applications.

Some councils have, however, expressed concerns about the new approval process applying to duplexes indicating they would prefer to retain a planning approval process for duplex applications.

Changes to the approval process for houses and duplexes

Opt in approval process for duplexes

Schedule 4 of the SPR, as amended by the Building and Other Legislation Amendment Regulation (No.1) 2010, allows local governments to opt in to the simplified process for duplexes from 26 March 2010. This means that councils will need to pass a council resolution or adopt 'self assessable' provisions for duplexes in their planning schemes to allow duplexes to be approved through building approval processes. For both of these options councils may refer to the new QDC default provisions for duplexes, as explained below. Councils may continue to apply existing amenity and aesthetics resolutions for duplexes adopted prior to these changes.

Alternatively, councils may choose to retain a full planning application for duplexes through a material change of use development application for code or impact assessment under a planning scheme.



Detached houses will continue to be exempt from any requirements for a material change of use development application under a planning scheme unless a relevant overlay applies. In addition, all development must continue to comply with any relevant self assessable codes in a planning scheme.

New Queensland Development Code (QDC) for duplexes - MP1.3

Where a council resolves to opt in to the approval process for duplexes a new QDC Mandatory Part 1.3 – Design and siting standard for duplex housing will apply for the assessment of building development applications. The new part covers the same issues included in the QDC parts that apply to detached houses such as siting, open space, building height, screening and car parking.

MP1.3 is the default standard for duplexes and councils may use alternative planning provisions for some or all of the performance criteria. Where alternative provisions are set, planning schemes should set quantifiable standards (a standard that achieves a performance or outcome) for the qualitative statements (a statement about performance or an outcome sought). This is similar to the way in which councils can already set alternative provisions for siting, boundary clearance and other matters under QDC Mandatory Parts 1.1 and 1.2.

The SPR specifies that if the development does not comply with an acceptable solution of the QDC (or planning scheme equivalent) it must be referred to local government for concurrence agency advice. If a council uses an amenity or aesthetics resolution then all duplex applications will need to be referred to local governments for concurrence advice.

New Local Government concurrence agency for houses and duplexes

From 26 March 2010, Local Government concurrence agency referrals will also apply for building applications for duplexes where councils choose to opt in to the approval process using self assessable planning scheme requirements. The concurrence requirements for houses will also be clarified. Previously, many local governments purported that a planning permit was required in some circumstances because the application triggered an elevation of assessment level—for example, the application did not comply with the acceptable solution of the planning scheme. Schedule 4 of the SPR now clarifies that these applications are exempt from the need for planning assessment. The SPR requires the building application in these circumstances, to be referred to Local Government for concurrence advice.

For example, if a self-assessable code previously required that an application be elevated to code or impact assessment where the proposal did not comply with the acceptable solutions, then the application will now require referral to local government. The referral period will be 10 business days. Local governments will have the power to direct the building certifier to refuse the application or approve it with conditions. This decision can be appealed to the Building and Development Dispute Resolution Committees, which provide a cost effective service for appeals of this nature.

Councils will continue to retain control over planning in their area. The new approval processes are not intended to alter local outcomes. Councils can continue to set appropriate lot sizes and retain responsibility for managing population densities.

Clarification on overlays

The wording of schedule 4 of the SPR with regard to overlays has also been clarified to ensure the exemption applies where there are no relevant overlays, where land within an overlay does not trigger assessment against an overlay code, or where the overlay relevant to the assessment is a bushfire overlay and the premises are less than 2000 square metres.

Other minor QDC changes

New versions of the QDC Mandatory Parts 1.1 and 1.2

Minor amendments have been made to QDC Mandatory Parts 1.1 and 1.2 including clarification that the side and rear boundary clearance requirements apply to decks, patios, pergolas, verandahs or the like (other than those permitted under clause A2(c)(v)) and also to structures used for recreational or entertainment purposes or the like. These boundary clearance requirements apply irrespective of whether the structure is class 1 or 10.

No change has been made to the performance criteria and alternative solutions may still be proposed. The changes are mirrored in the new QDC MP1.3 for duplexes.

Urban Land Development Authority (ULDA) related amendments

QDC Mandatory Parts 1.1, 1.2 & 1.3 also now provide that they do not apply where a land use plan is approved under the Urban Land Development Authority Act 2007. Under this Act, the ULDA makes land use plans and guidelines that contain provisions adequate to cover issues addressed under these QDC parts. These provisions have been included to avoid confusion where building certifiers are considering a building application in declared Urban Development Areas.

Relevant legislation

Building and Other Legislation Amendment Regulation (No.1) 2010
Sustainable Planning Regulation 2009
Building Regulation 2006
Queensland Development Code Mandatory Parts 1.1, 1.2 and 1.3.

Contact for further information

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