

***BUILDING AND OTHER LEGISLATION
AMENDMENT BILL 2006***

EXPLANATORY NOTES

FOR

**AMENDMENTS TO BE MOVED DURING
CONSIDERATION IN DETAIL BY THE
HONOURABLE DESLEY BOYLE MP**

Title of the Bill

Building and Other Legislation Amendment Bill 2006

Objectives of the Amendments

To provide for a number of important but non-contentious issues relating to:

- Clarifying the operation of, and updating certain provisions of the Queensland Development Code (QDC) that operate under the Bill;
- Clarifying the operation of reminder notices on building approvals apply only to those approvals given after the commencement of the Bill;
- Making improvements to swimming pool fencing requirements;
- Correcting an error in the manner and date at which certain amendments related to the lapsing of development approvals under the *Integrated Planning Act 1997* came into force;
- Correcting an error that would allow councils to dispose of land without using tender and auction procedures under the *Local Government Act 1993*; and
- Making improvements to greywater use requirements.

Achievement of the Objectives

The objective will be achieved by:

- Clarifying the operation of parts 11 and 12 of the QDC, (House design and siting standards) so that local governments may make provision in a planning scheme for other matters in addition to boundary clearances and site cover matters. These matters become building assessment provisions and will not trigger a referral to the council unless an alternative building solution is proposed;
- Updating QDC parts 25 (Rainwater tanks standards) and 31 (Floating building standards) to reflect changes made to these standards since the introduction of the Bill in April;

- Clarifying that reminder notices are to be given to owners for building approvals with completion conditions only where approvals are given after the commencement of the bill, and this requirement does not apply to pre-existing approvals.
- Placing greater responsibility on pool builders to ensure pools are fenced before they place water in the pool. The amendments also clarify that an authorised person of a local government can enter land to inspect pool fencing upon a complaint that the pool fencing is dangerous. Another amendment provides that pools on decks that cannot be directly accessed from outside a residential building are indoor pools and are not subject to the same fencing requirements as outdoor pools.
- Giving effect to transitional provisions provided for in section 75 of the *Integrated Planning and Other Legislation Amendment Act 2006* (IPOLA 06) by commencing that section, giving retrospective effect to any development applications made, or any development or use started, on the mistaken assumption that section 75 had commenced. Certain transitional arrangements affecting the lapsing of development approvals for material changes of use and reconfiguration in IPOLA 06 were to commence in late March 2006. These transitional arrangements were to keep certain existing approvals alive for a few months to allow applicants time to consider whether to proceed with development under those approvals, seek an extension of their approval, or re-apply under new rules. However, an error in commencing the transitional provisions meant some existing approvals were not covered. This amendment redresses the situation by deeming that the arrangements, as originally intended, commenced in March 2006, for the affected approvals to continue in effect to the present. It also deems that applicants have until the end of 2006 to decide whether to proceed with development under those approvals, seek an extension of their approval, or re-apply under new rules.
- Clarifying that local governments may only dispose of land using the tender or auction process set out in section 491. Following the commencement of the *Local Government and Other Legislation Amendment Act 2005*, the exemption provided under section 492(f) could have been interpreted as applying to land as well as other non-current assets. The Parliamentary debate and explanatory notes for the 2005 amendment Act were clear that local governments be required to use a tender or auction process to dispose of land.
- Providing for householders to use greywater from laundries, baths, showers and hand basins for above ground watering in response to community demand for a legal and less costly way to use greywater. These changes are part of the Government's response to the worsening drought in South East Queensland and form part of the South East Queensland water plan. The objective will be achieved by exempting all greywater except kitchen greywater from the greywater discharge offence provisions under the *Plumbing and Drainage Act 2002*.

Householders will be able to distribute greywater on their own premises providing it does not run into neighbouring properties or cause an odour.

Estimated Cost for Government Implementation

The amendments to the *Plumbing and Drainage Act 2002* would have a low implementation cost. The only foreseen cost is that of an awareness campaign publicising the changes. This would be estimated to cost in the vicinity of \$50 000.

The greywater amendments support the Government's initiatives to help residents and businesses in South East Queensland improve their water efficiency. Total funding of \$92.2m has been provided to these initiatives, which include cash rebates for the installation of above ground greywater distribution systems.

There are no other implementation costs associated with the amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles. Where provisions are to be given retrospective effect (with respect to the *Local Government Act 1993* and the *Integrated Planning and Other Legislation Amendment Act 2006*), this is to correct errors and validate actions taken in good faith by councils and persons who mistakenly relied on what they thought the law to be.

Consultation

The Office of the Queensland Parliamentary Counsel and the Department of the Premier and Cabinet have been consulted in preparing the amendments.

A community questionnaire formed part of the Pool Safety Options Paper which was released in November 2005 to stimulate public discussion on making Queensland's neighbourhoods safer for toddlers. Responses were received from the general community, individual local governments, the Local Government Association of Queensland (LGAQ), Swimming Pool and Spa Association and the Commissioner for Children and Young People and Child Guardian. The responses to the discussion paper have led to progressing three committee amendments for swimming pool fences. The Department is continuing development of other higher impact legislative changes for swimming pool regulation.

There has been some consultation relating to the amendments relating to the distribution of greywater with local governments, the Environmental Protection Agency and the Department of Health. Some councils expressed concerns as to whether they had sufficient staff to undertake complaints investigations. The Department of Health raised some concerns about possible health impacts if the provisions were misused.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 to make provision for the commencement of the following amendments to be moved during consideration in detail of the Bill to commence on assent:

- Amendments to the *Integrated Planning and Other Legislation Amendment Act 2006*;
- Amendments to the *Local Government Act 1993* in relation to sections 95D and 95F.

Part 4 amendments to the *Plumbing and Drainage Act 2002* also commence on Assent and the remaining provisions of the Bill are to commence by proclamation.

Amendment 2 amends clause 5 to include in the definition of ***building work***, those matters of the QDC parts 11 and 12 that may not necessarily be building work but are an aspect of, or matter related or incidental to, building work. These matters are required to be assessed as part of a building application. For example, providing for mandatory car parking on a small lot would not fall within the unamended definition of building work and therefore would not form part of the building assessment provisions. The amendment clarifies that the assessment of this particular aspect would be assessed as part of a building application.

Amendment 3 inserts new section 27A to amend section 16B(1) by replacing subsection (c) which places the onus on the person filling the pool with water to ensure the pool has a compliant pool fence. Currently the legislation places the onus on the pool owner when often it is the pool builder who fills the pool. The amendment ensures that the owner and the builder are both responsible for ensuring a pool is fenced before water is placed in it.

Amendment 4 inserts new section 66AA to clarify that reminder notices are to be given to owners for building approvals with completion conditions. These notices apply only to those approvals given after the commencement of the Bill and not to any pre-existing approvals.

Amendment 5 updates Schedule 1 referencing the mandatory parts of the QDC that are building assessment provisions for the purposes of the *Building Act 1975* following a new version of part 25, (Rainwater tank standards) and the development of new part 31 (Floating building standards) since the Bill was introduced in April 2006.

Amendment 6 includes the definition ***QDC boundary clearance and site cover provisions*** in the dictionary. Section 5H identifies the term as a key definition and the dictionary will now include the defined term to assist in interpreting the Act.

Amendment 7 amends the definition *indoor swimming pool* to clarify that a swimming pool on a deck or roof of a building which is only accessible from within the building, is an indoor swimming pool. A swimming pool that can be accessed directly from outside the building remains an outdoor swimming pool. For example, a swimming pool located on the deck of a house where the only way of gaining access to the pool area is through the house, is an indoor pool. A swimming pool located on the deck of a house where the deck has direct access to the backyard via stairs, is an outdoor swimming pool.

Amendment 8 inserts new parts 3A (Amendment of the *Integrated Planning and Other Legislation Amendment Act 2006*) (IPOLA 06) and new part 3B (Amendment of *Local Government Act 1993*).

New section 95A provides that part 3A amends IPOLA 06. New section 95B amends the section 2 (Commencement) of IPOLA 06 to make provision for section 75 of that Act to have commenced on 30 March 2006.

The amendment will address the failure to commence section 75 and to give retrospective effect to any development approvals that mistakenly relied on the presumption that section 75 applied. Certain transitional arrangements in IPOLA 06 were to commence in late March 2006 concerning applications for changes of use. These transitional arrangements were to keep certain existing approvals alive for a few months to allow applicants time to consider whether to proceed with development under those approvals, seek an extension of their approval, or re-apply under new rules. However, an error in commencing the transitional provisions meant some existing approvals were not covered. This amendment redresses the situation by deeming that the arrangements, as originally intended, commenced in March 2006, for the affected approvals continue in effect to the present. It also deems that applicants have until the end of 2006 to decide whether to proceed with development under those approvals, seek an extension of their approval, or re-apply under new rules.

New section 95C extends the application of section 6.5.1 of the *Integrated Planning Act* from June until December 2006.

New part 3B section 95D provides that part 3B amends the *Local Government Act 1993*.

Section 95E amends section 492 to clarify that local governments may only dispose of land using the tender or auction process set out in section 491. Following the commencement of the *Local Government and Other Legislation Amendment Act 2005*, the exemption provided under section 492(f) could have been interpreted as applying to land as well as other non-current assets. The Parliamentary debate and explanatory notes for the 2005 amendment Act were clear that local governments be required to use a tender or auction process to dispose of land.

Section 95F amends section 492A (Required procurement and asset disposal manuals) to update an incorrect section cross reference.

Section 95G amends section 1070 (Entry on land for local government purposes) to clarify by way of example that an employee or agent of the local government may enter the land, if no occupier is present, to inspect a swimming pool fence in the circumstances where urgent action is necessary in the interests of public health and safety. The example is a swimming pool fence that may be dangerous to children because it does not comply with the pool fencing standards under the *Building Act 1975*. The information may be received verbally and anonymously.

Amendment 9 inserts new section 96A to amend section 85 (Process for assessing plans) to update cross references as a result of omitting section 85A.

New section 96B omits section 85A (Local government's power to stop further greywater use facility requests for premises in a sewerage area). This omission will require local governments to assess applications for greywater use facilities for premises in a sewerage area.

New section 96C amends section 85B(2)(a)(iii) (Restrictions on giving compliance permit for greywater use facility in a sewerage area) to omit the provision that had previously prohibited a council from approving a greywater use facility if the local government had, by resolution or in a planning instrument, declared the relevant area to be unsuitable for greywater use.

Amendment 10 inserts new section 99A that amends section 128M (Offences about discharging greywater other than kitchen greywater from premises). This provides for the use of greywater from laundries, baths, showers and basins from single detached dwellings. This greywater is able to be used above ground for the irrigation of lawns and gardens, only on the premises from which the greywater was generated, and may not cause a nuisance, danger or health risk to any one.

Amendment 11 amends clause 100 division 4 heading (Transitional provision for Building and Other legislation Amendment Act 2006) to correct a typographic error.

Amendment 12 inserts new section 173 (Provision about offences under section 128M) to provide that a proceeding can not be started for an offence under the pre-amended section 128M, if the circumstances do not constitute an offence after the commencement of this section. The amendment also clarifies the meaning of post-amended section 128M and pre-amended section 128M.