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LEGISLATIVE RESPONSIBILITIES - A REMINDER

Purpose

It has been six months since the *Integrated Planning Act 1997* (IPA) and private certification were introduced into Queensland. During this time, private certification has significantly improved the efficiency of the development approvals system, but has also highlighted the need for all building certifiers to fully understand their legislative responsibilities under the IPA and *Building Act 1975*.

The purpose of this newsletter is to remind building certifiers of these responsibilities.

Other assessments under a planning scheme and the IPA

A building certifier may assess and decide development applications for building works under the Building Act.

Section 5.3.5(4) of the IPA requires that a private certifier must not decide their component of the proposal ahead of the other assessable components, other than plumbing and drainage works in a sewerage area.

Many development proposals will involve different types of assessable development. For example, a material change of use, building work (for example, the height of buildings) reconfiguration of a lot, etc. Assessable development is identified in the planning scheme or Schedule 8 of the IPA.

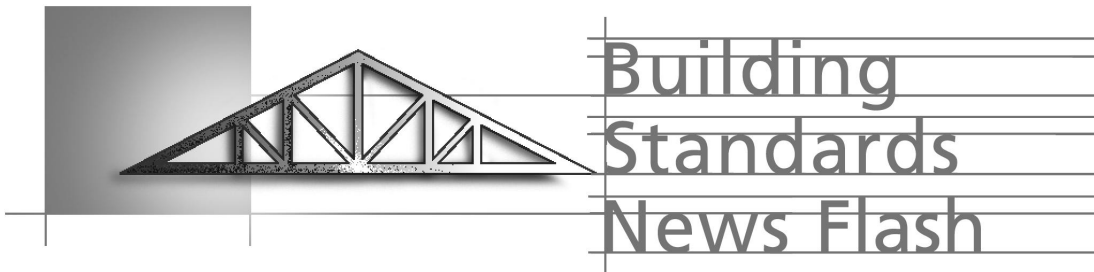
A useful guide is to examine other permits for the development which may have been issued. Section 3.5.15(2) of the IPA states that a decision notice must identify other development permits necessary before the development can proceed.

Before issuing a permit, private certifiers must be absolutely sure that no other approvals are required. This is their statutory obligation. If there is any doubt, the private certifier should seek professional advice from a consultant or the Council. Private certifiers should not be interpreting planning schemes unless they have the qualifications and experience to do so. They should also not accept verbal advice, except as a second opinion. All too



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often, verbal advice is easily misinterpreted, is only as good as the questions asked, and cannot be relied upon at a later stage if a problem arises.

In all cases, private certification should be documenting why they consider no other approvals are required under the planning scheme and IPA, and the advice they sought to arrive at this conclusion.

Obtaining Information from Councils

Building certifiers must ensure they check essential site information before assessing and deciding a development application. For example, ensuring that services, such as stormwater drains, will not interfere with the location of a proposed building.

All certifiers have a duty to inform themselves of matters which may affect a development application and consider all relevant and available information. For example, whether the land is subject to “slip” problems, does the council have an amenity and aesthetics policy, is the area sewered, the location of sewer mains, etc.

Failure to do so is considered to be negligent and may be professional misconduct.

Good practice also suggests that a building certifier should undertake a site survey, where possible, to make themselves aware of any matters that may influence the development approval.

All steps undertaken by a building certifier to check site information should be documented.

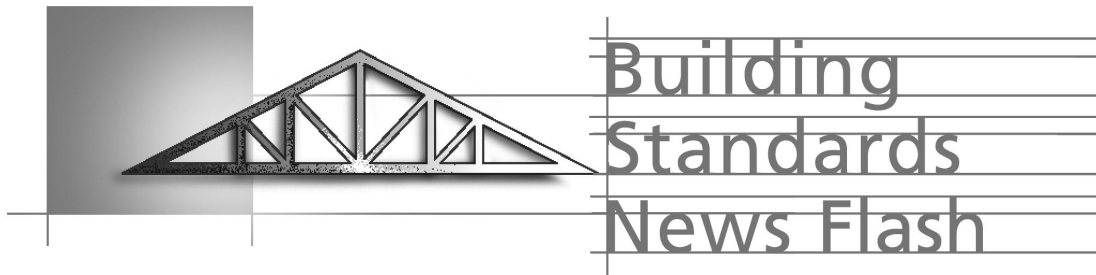
Identifying self-assessable codes in decision notices

Section 3.5.15(2)(h) of the IPA requires private certifiers to include on their decision notice details of any other code the applicant may need to comply with. It is not acceptable to state on the decision notice that relevant codes are those contained in the planning scheme.

If a private certifier is not able to identify these codes, professional assistance should be sought from the council or a suitably qualified planning consultant.

Local law approvals

If an aspect of development is regulated by a local law, then compliance with the local law would be binding on the owner. But as a local law is not a code for IDAS there is no requirement for the details of compliance with the local law to be mentioned in the building work decision notice nor for a private certifier to withhold issuing of a development permit until compliance with the local law is completed. Compliance with the Local Law is binding on the applicant. Nevertheless, a private certifier should ensure their client is made aware of any local laws impacting on the development.



Applying inappropriate conditions

Private certifiers must ensure all aspects of a proposed building are documented. Nothing should be assumed. For example, alterations to a shopping centre which is air-conditioned must show in the documentation how ventilation will be provided in the modified building. It is easy to assume it will still be air-conditioned, however the documents must confirm this.

Meeting required time lines

Times by which action must be performed by private certifiers are set out in various areas of the Acts and Regulations. Private certifiers have a statutory duty to comply with these requirements.

Standard of documentation

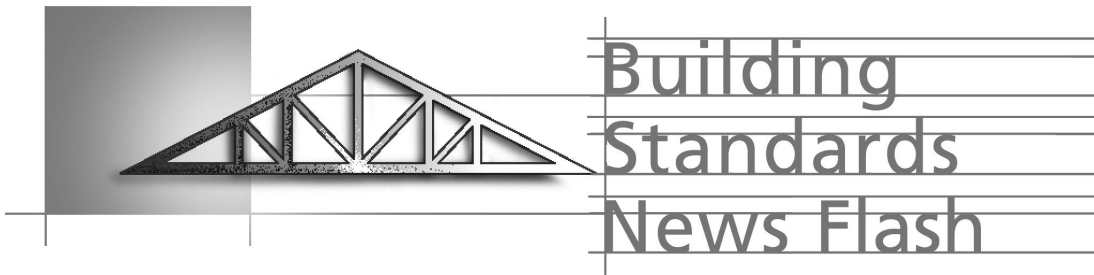
Documentation must be completed to standards required under the legislation. For example:

- IDAS application forms must be fully completed, including property details and owner's consent;
- Information must be forwarded to councils within the prescribed times;
- Decision notices must reference application details and approved plans;
- Decisions must be fully documented, such as engaging a competent person;
- Plans should not be accepted unless they are complete. (eg, details of pool fencing should be included on an application for a swimming pool).

Properly completed forms and paperwork are essential if a private certifier is to meet auditing requirements and protect their clients.

Accepting certification from competent persons

A building certifier is permitted to accept certification that components or aspects of building work are compliant to the extent that such compliance is certified by a competent person. Before accepting such a certificate, the building certifier must be satisfied that the person who is to give the certificate is competent to practice in respect of the aspect of the work involved, and if applicable, is registered or licensed.



Certification by competent persons is intended to apply to the assessment of those elements of building work which are outside the expertise of a building certifier, or which can be equally assessed by another person.

The Department has received numerous enquires regarding the use of these provisions. It appears there is a degree of uncertainty about how they should be applied.

The following principles shall be applied when using competent persons:

1. Certifiers must use competent persons to assess specialised aspects of a building beyond their own competencies. This may occur where building work is being assessed against the performance provisions of the BCA for a specialised area such as fire safety.

The BSA Code of Conduct for building certifiers defines the standards of behaviour expected of building certifiers. The Code requires certifiers to not undertake professional work which they are not competent to perform. If they are in any doubt as to this matter, they must obtain such advice and assistance as will enable them to carry out such work competently or alternatively accept certification of an aspect of the work from a competent person.

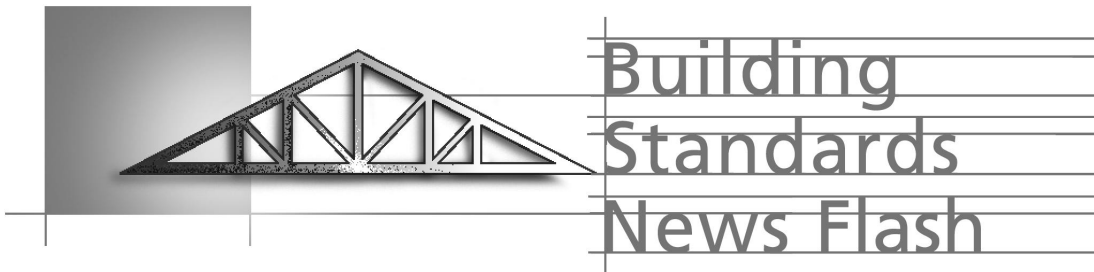
A building certifier undertaking professional work for which they are not competent to perform may be found guilty of professional misconduct.

2. The onus is on the building certifier to be satisfied that the competent person has the necessary expertise, qualifications and experience. This must be done before inspections are undertaken. In addition, the certifier should clearly document the reasons for assessing a person as a competent person.

Before accepting a certificate from a competent person, the building certifier must be satisfied that the person who is to give the certificate is competent to practice in respect of the aspect of the work involved, and if applicable, is registered or licensed.

The certifier is responsible for accepting certification from competent persons. This will involve self certification in some instances (eg, engineers may design, inspect and certify their own work in some cases). Careful assessment of the competence of the appointee is vital. Generally speaking, the person signing such documentation assumes liability for the work, but the building certifier in accepting the documentation must also use reasonable care to avoid liability. The private certifier must also carefully assess the content of a certificate to ensure it completely satisfies the demands of the situation.

3. Certifiers should be careful in accepting certification from persons with questionable objectivity eg the builder undertaking the work. Although not currently unlawful, this practice is not considered to be desirable and should not be permitted to become standard practice.



These problems are particularly evident where it is not cost effective for the building certifier to undertake inspections because the building work cannot be readily inspected by the certifier or is in a remote area. As stated in earlier advice to certifiers, it is acceptable in the case of remote buildings for a private certifier to rely on inspections by a registered builder assessed as a competent person where there is no alternative. However this should not become standard practice elsewhere.

4. Certifiers must ensure all aspects of a stage of construction have been inspected or certified. For example, the use of competent persons to undertake final inspections for class 1 and 10 buildings would not be proper practice unless that person was qualified to inspect all aspects of the building in accordance with the guidelines in schedule 8 of the regulations.

Interpretations

Private certifiers should test their interpretations by considering if the decisions will stand up to critical review. If necessary, they should discuss their interpretation with peers or seek legal advice if legislation is involved.