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PLANNING ISSUES

Conditions which require the approval of further plans (eg a landscaping plan) prior to the lodgement of a building application

Councils often include conditions on permits which require the lodgement of further detailed plans relating to matters such as landscaping and ~~sid~~etworks. Usually these conditions require the lodgement of plans with council prior the lodgement of an application for building work. Private certifiers are not clear whether these conditions prevent them from issuing a decision notice to approve building work.

S3.5.28. of the IPA states that a development approval attaches to the land and binds the owner, the owners successors in title and any occupier of the land. A development approval does not bind a private certifier except under s5.3.4, which requires a private certifier to ensure the application being assessed is consistent with any earlier approval.

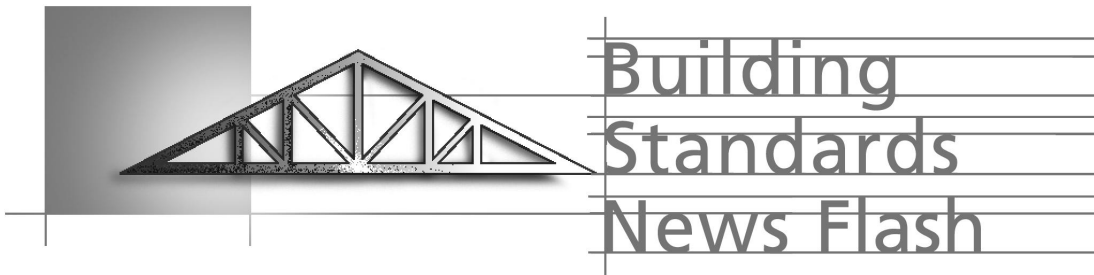
Therefore a condition on a decision notice of a procedural nature does not bind the private certifier. Having accepted the application, the private certifier is required to assess and decide it under IDAS, ensuring that it is consistent with earlier approvals and that all other necessary permits have been issued. It would of course be prudent for the private certifier to remind the applicant that they are bound by the conditions included on all development permits.

A condition requiring applicants to lodge a further IDAS application

Some councils have also issued development permits with a condition requiring that a further application be lodged for operational work to assess landscaping and ~~sid~~etworks.

Assessable development is defined in the IPA as development specified in schedule 8, part 1; or development that is declared under a planning scheme to be assessable development. Therefore a development permit cannot impose a condition requiring applicants to lodge a further application for development unless it is assessable development under schedule 8 or the planning scheme.





Siting of buildings a material change of use or building work?

There appears to be some confusion as to whether the siting of a building should be considered as a material change of use or building work.

Some councils are interpreting a change in siting requirements as a material change of use because of a change in the intensity or scale of the use eg a house is closer to the boundary than originally envisaged. This view is incorrect as the character and scale of the use remains the same. What has changed is the building work.

However it is appropriate for councils to attach building related conditions on a permit for material change of use where aspects of the building work are conditioned to mitigate the impacts of the proposed use eg a building envelope.

Some confusion may arise where a development permit for a material change of use already exists which contains a condition relating to the siting of buildings ie building work. In this situation, where a change to the siting is sought, a development application would be required to change the permit conditions about the building work. This in itself does not make the application one for a material change of use.

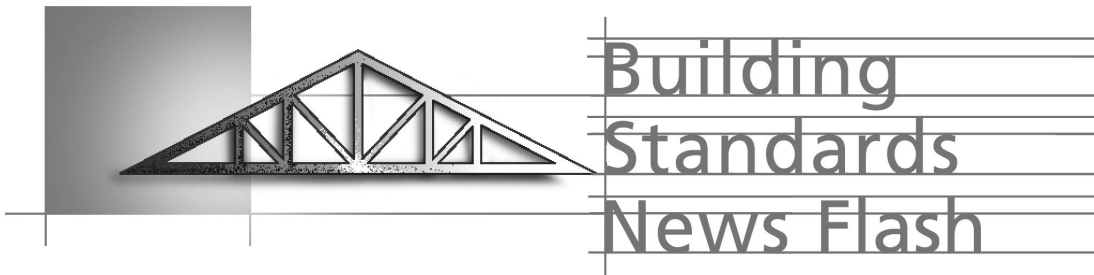
A change to the siting of a building covered by a development permit can be dealt with in two ways. If the change is minor and not likely to affect any third parties (as defined in Schedule 10 of the IPA), the application can be dealt with under s 3.5.24 as a request to change a development approval. If not a minor change, an IDAS application for building work assessment under the planning scheme would normally be required. The acknowledgement notice should state this and the application would follow the same assessment process as the original application.

The view that siting should be considered as building work is supported by the SBR which defines siting standards for single detached class 1 buildings and class 10 buildings and structures as building work.

Matters subject to code assessment under a planning scheme

It is the responsibility of the applicant to ensure that the development complies with all stated codes, including those contained in the planning scheme.

The private certifier is only responsible for assessing the building work for compliance with the SBR. However it is in the private certifier's and applicant's interest to ensure all codes are complied with. If the private certifier is aware of the existence of codes relevant to the building work it would seem prudent to advise the applicant acknowledging this might not represent all codes that must be complied with. It might also be prudent for private



certifiers to remind applicants generally of their responsibility to comply with all relevant codes and if in doubt to check with the council.

Sometimes a planning scheme may include self assessable codes which still allow the council to apply discretion. For example, some planning schemes include car parking provisions which allow council to prescribe a greater number of car parking spaces where it considers the development is likely to generate more than expected demands. While there is nothing to stop a private certifier from issuing a permit for building work, it would be in the applicant's interest for this matter to be resolved first, particularly if it is to affect the design and siting of the building. Regardless, the applicant must still comply with the code.

Imposing conditions preventing the issuing of a certificate of classification until unrelated matters have been finalised.

Certificates of classification are issued under the Standard Building Regulation (s92 to 105). They apply to attached houses (class 1a) boarding houses (class 1b) and commercial buildings such as warehouses, shops, offices, etc.

Certificates of classification must be issued upon "substantial completion" of a building (s98). Substantial completion is a defined term (s92) and contains matters that relate generally to structural stability of a building, fire safety and health and amenity issues. Certificates of classification do not address issues relating to conditions that may be imposed under a planning instrument, for example the placement and location of landscaping and carparking, the provision of crossovers, etc.

Conditions attached to development approval involving a material change of use, operational works, carrying out plumbing and drainage work or configuring a lot, cannot contain conditions that will prevent or delay the issuing of a certificate of classification.