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Submission – Management of Staged Approvals

Introduction

The Association of Australian Certifiers (AAC) represents registered certifiers employed in private practice and in local government in NSW.

This submission relates to a significant issue confronting registered certifiers in NSW, namely, the management of staged approvals and the Building Code of Australia (BCA).

The AAC thanks officials for their willingness to consider this submission.

Issues

BCA versions

Amongst other things, a Construction Certificate (CC) is used to verify the work you intend to carry out complies with the BCA.

Some developments require multiple CCs for various stages of the project. For example, a CC could be issued for works up to the ground floor slab and a second CC could be issued for the remaining floors.

Additionally, modified or updated CCs are required after a S4.55 is approved.

As the BCA is sometimes updated, the issue of what version of the BCA is to be relied on when it comes to the management of multiple CC in a staged approval process has persisted for some time.

The consensus industry position is that the version of the BCA in force at the receipt of the first CC Application Form determines the relevant BCA for the entire development, even if an updated version of the BCA is issued during the lifetime of the issue of building approvals for the development. In effect, any subsequent CCs are treated as amendments to the original CC for the purpose of determining the applicable version of the BCA.

However, we are aware that the potential for a conflicting view exists whereby each staged CC would be expected to comply with the BCA version in force at the time of the application of that CC. This would have the potential to create significant compliance issues for building owners. If a building was approved in stages with the

CCs straddling that version change then the compliance requirements could be deemed to have changed over the construction period. This is not a practical or appropriate way to administer building approvals.

The lack of clarity around this issue means that owners are at risk that a recently completed building could be deemed to be non-complying and at risk of requiring expensive rectification. This issue requires clarity both with respect to current and completed projects, which could be provided through a direction from government or regulatory amendment.

Date of application

Another issue which needs to be clarified is when the actual date of application begins.

Industry consensus is that this occurs when an application, signed by an applicant, is received by the Principal Certifier (PC), as opposed to just when it is signed by the applicant.

Additionally, if it is for staged approvals, there are differing views on whether the application is to be on separate forms or one form.

These are matters that could also be addressed through a direction from government.

Recommendation

The AAC is of the strong view that the above matters should be addressed as a matter of urgency, as per the following recommendations:

BCA versions

Recommendation 1a:

- The NSW Government adopts the Victorian approach in the *Building Act 1993* Section 10, that:
 - A building regulation, or an amendment to a building regulation, does not apply to the carrying out of building work if the relevant building surveyor is satisfied, and certifies in writing, that substantial progress was made on the design of the building before the building regulation or amendment commenced.
- This could be achieved through an amendment to the *Environmental Planning and Assessment Regulation 2000*.

Recommendation 1b:

- The NSW Government could also adopt a regulation change with retrospective effect that:
 - The version of the BCA applicable to any staged CC is the version in force at the date of the first application for the first staged CC for that development.

Date of application

Recommendation 2:

- The date of the application occurs when an application, signed by an applicant, is received by the PC.

This is the common-sense approach to addressing this important matter.

For further information

To discuss this submission further, please contact AAC CEO, Jill Brookfield on 0431 082 259.