24 March 2014

Building Designers Australia response to:
Building Certification – serving a new planning system for NSW

Building Designers Australia

Building Designers Australia is the national entity that represents building designers in all States and Territories of Australia. From a national level through to a local level Building Designers Australia provides a voice for building designer members on a range of issues affecting the built environment, the building industry and the wider community.

Building Designers Australia and its members are actively involved in those discussions which impact on the creation of designed spaces and how we live, work and play within our current and future communities.

To find out more on who we are and what we do please visit www.bdaa.com.au or www.mydesigner.net.au

Building Designers Australia NSW Chapter response

Members of Building Designers Australia NSW Chapter management committee who have provided a response on behalf of our members to the Building Certification – serving a new planning system for NSW paper prepared by George Maltabarow thank the Building Professionals Boards for the opportunity to make a submission.

The general outcomes that regulation and certification seek to secure are two-fold. First, a level of building performance consistent with the needs of an advanced society in terms of health, safety, amenity and sustainability and second, compliance consistent with planning expectations as defined by the planning system.

There is a need to ensure that ALL stakeholders are involved not just the Government, Councils & Certifiers.

BDA suggests that ensuring due process in certification of building documentation and construction requires recognition that the building project phase commences well prior to the engagement of the builder in most instances. This may be slightly different where a project builder is engaged by the client but even in this circumstance it is the quality of the design documentation in the first instance which will determine the quality of the built outcome.

The BDA submission provides responses to certain matters raised within the paper prepared are highlighted in orange. These BDA responses are reflective of the BDA member position.

The Government’s White Paper acknowledges that building regulations and certification are a significant part of the NSW planning system and this Review seeks to identify changes aimed at ensuring that the new planning system is supported by a robust certification system.
There is a need to ensure that ALL stakeholders are involved not just the Government, Councils & Certifiers.

The White Paper aim of 80% of all developments being complying or code assessment within the next five years will pose a major challenge for the certification industry and those who regulate it alike.

This will not only pose a major challenge for the Certification industry but a major challenge from the design sector through to the construction sector.

Building construction risks are best managed by the builder and outcomes for consumers will depend on the clarity with which the roles and accountabilities of all the participants in the process are specified in statutes and regulations.

Everybody in the building processes needs clarity in their roles & their accountability, the statutes & regulations should carefully structured, concise & unambiguous not like the current add-on we are dealing with now.

How far does a certifier need to go to certify a reasonable level of compliance with both Council consent conditions and the Building Code of Australia?

Currently in the CDC form where total compliance with the SEPP guarantees approval there does not seem to be a problem with the Certifiers role in the Certification and compliance with the NCC, it is when councils place onerous, ill thought out ambiguous conditions on the Development Approval that causes most of the problems.

All the relationships in the building process have some potential for conflict and therefore regulations should seek to establish the right balance between the interests of the participants. The recent changes to regulations which mandate contracts between Certifiers and owners and which widen the scope of certification at the completion stage are controversial and there is a case for them to be withdrawn.

There has to be some form of contract between the two parties the owner & the contractor and that contract should be agreed to by both parties. Why would the Government have to get involved as a third party?

Finally, the performance of the BPB in supervising certifiers will be all important to securing public confidence in the way a new planning system is implemented. To do its job properly, it will need a clear and modern statutory framework and good data to support the exercise of its functions. Consumer outcomes, however, will depend not only on the BPB and the certification function, but the way relevant initiatives are effectively co-ordinated across Government.

The structure of the BPB compliance committees will be the most important factor to ensure that the public and the industry are well served.

It is difficult to hold practitioners in the building chain accountable for their performance unless their responsibilities are clearly defined and consistently reflected in processes and relationships.

This is true across the construction industry.
Some relationships are defined through contract and are essentially commercial in nature and outcomes depend essentially on how well deliverables are specified and the competence of the contract parties.

This is also a very important point from the Councils LEP, DCP to the documentation of the works to the construction and certification of the works.

The White Paper proposal to mandate certifier notification to Councils of instances of non-compliance is a step in the right direction. However, the Queensland proposal of “first instance” enforcement actions is worthy of consideration. In any case, Councils should be given the tools to discharge their community responsibilities within a framework that requires cooperation between private certifiers and Councils. This should allow Councils to focus on their core objectives and choose whether they should remain in the certification business.

Council’s certifiers would have to be subject to the same BPB scrutiny as their fellow private certifiers.

While the White Paper proposes to simplify the task of certifiers by standardising consent conditions and addressing issues of variation in their interpretation, the task of defining exactly what areas of consent compliance a certifier should focus on will remain. Probably more difficult is the task of defining BCA compliance. Should, this emphasize areas of concern such as fire protection, waterproofing and structural integrity? Or should there be a risk approach taking into account the use and complexity of buildings? Again, these issues will require the application of a high degree of technical expertise to resolve.

This could be resolved by making sure that the people who are trained and hopefully accredited in their respective technical expertise are responsible for the certification of that section of the works eg. The structural engineer is responsible for the certification of footings, slabs beams bracing etc. The fire engineer is responsible for the certification of the fire safety systems. The more complex the works the more important it would be to have a professional in that field oversee the works. A private certifier cannot be expected to know all of the standards & rules of each trade on a building site. The Certifier would be responsible of ensuring that all the certification paperwork is present prior to issuing the occupation certificate.

In addition, the compliance regime supervising certifiers needs to be strengthened and allow for both effective disciplinary procedures and professional support to ensure that an effective certifier function is maintained. This will involve both operational improvements and additional resources, which should, at least be on a relative par with Victoria and Queensland. To meet these challenges, the BPB should be restructured and given the required leadership and direction.

This is important, also to ensure that an effective BPB is created not just another bureaucratic malaise is created.

While this Review has focussed on those aspects of building regulation which deal with certification and its role in ensuring that building work complies with building and planning codes, statutes and regulations; outcomes from a consumer’s viewpoint also require effective licencing and registration of builders, appropriate training and skills, building specific regulation and consumer protection.
This is not only essential for builders but needs to be implemented from the initial design phase right through the building processes to the certifiers.

The implementation of a new planning system for NSW will need to be supported by a robust building certification scheme. However, this will not of itself secure the desired outcomes. It follows that a holistic approach is required and this could be achieved by a joint program between the Administrations of Planning and Infrastructure, Fair Trading and Local Government.

All Government departments should have input into the Planning System if they are to be the police of the system and have to maintain the system's integrity in the eyes of the consumer.

The key recommendation is for three expert panels to be appointed. The first to assess the regulatory impact of the proposals in Chapter 8 of the White Paper. This work should be taken in parallel with two other panels; one to deal with local Council empowerment and the second to develop streamlined regulatory obligations and a practice guide for certifiers.

All Government departments should have input into the Planning System if they are to be the police of the system and have to maintain the system's integrity in the eyes of the consumer.

The White Paper also targets reduced timeframes and documentation requirements to achieve cost savings to business and the community.

If there are to be reduced documentation requirements the Department of Planning & BPB will need to ensure that the documentation will be relevant, of a high standard and adequate for the job it has to achieve.

This dilemma necessarily means that better regulation cannot be equated with more regulation, even though there is always a temptation for those charged with developing improvements to plug gaps and extend scope.

This has been the problem for the last 10 years and it has been getting worst.

The requirement to maintain public confidence here must mean that the number of inspections should be increased, unavoidably placing increased demands on certifier resources.

The private certifier is not capable of carrying out the more complex inspections nor should they be, there are highly trained professionals in those fields of expertise who are more than adequately capable of certifying these sections of work.

The efforts of people charged with checking the actions of designers, builders and other practitioners can never substitute for responsible practitioners getting things right in the first instance. The ability to rely on commercial contracts; availability of contract remedies; well informed contract parties; effective licencing and accreditation; consent enforcement; practitioner education; and effective insurance arrangements all have a role to play.

All these things if done right will be of great benefit to the community as a whole, it is easier for the people charged with checking the actions of designers, builders and other practitioners as all the points mentioned in the second sentence will encourage the practitioners to be more professional, those who
The regulatory principles which appear to inform this issue of scope turn on the concept of a minimum level of consistency with the relevant codes. This is of course an area where experienced practitioners must exercise judgement and will focus on structural integrity, fire protection, health related issues, wet areas, building layout, conformity with the approved building envelope and the performance of mandatory building inspections. But the BCA and all its attendant standards, is highly detailed and complex. Similarly, consent conditions are sometimes unclear, internally inconsistent, and may require further conditional approval.

As mentioned these are onerous tasks required for a single consultant who has not been trained in these specific fields and has a minimum knowledge in most of these fields.

Clear and effective commercial relationships between building practitioners should reduce the burden of regulation and the degree of reliance that must be placed on regulatory checking and enforcement. Also, clear boundaries between regulation, enforcement and service provision are important. When the role of all practitioners is clearly defined and articulated through easily understood documentation, relationships between these parties can be expected to be more transparent and self-regulating.

This is the ideal, but not really that practicable. It will only be when a value has been placed on documentation by government, the public and the construction industry that the benefits of design documentation will be seen to have merit.

If the BPB wish to oversee a change beneficial to consumer, industry, government and the economies of the construction industry, formally recognising the skills of those professionals with expertise in their fields through accreditation, registration or licensing will benefit the built outcome if their roles are further integrated into framework of achieving the better outcomes in the overall construction industry.

Building Designers Australia NSW Chapter provides an outline of why building designer licensing should be implemented in NSW:

1. **WHY BUILDING DESIGNER LICENSING?**

   It is estimated that more than 80% of all new residential buildings and more than 40% of all other buildings in Australia are designed and documented by practitioners who are not registered architects. In NSW alone, architects prepare designs for only 3% of single residential and 10% of multi residential buildings. (Source: AIA and NSW Dept State Planning). In some states this leaves a very large portion of the industry being unregulated.

   We certainly respect the position that architects have in the design and building process but, as we have shown above, they do not prepare the designs and documentation for the majority of building projects undertaken in Australia.

   It is universally accepted that builders and other building practitioners should be registered or licensed as consumer protection and for community health and safety. The modern builder is trained to simply follow the approved documentation provided as part of the building contract and the quality of the finished
product is determined by the building design and the documentation provided by the designer of the building. This makes the building designer an integral part of the construction process.

The design and documentation often occurs before the builder is selected and thus before a building contract is entered into. Once construction begins, the builder can assume responsibility for the work being undertaken by subcontractors and others, but the designer is solely responsible for the design and documentation process.

2. CONTINUITY OF CONSUMER AND COMMUNITY PROTECTION

The design and documentation is the link between the consumer, the community and the builder. A regulated building industry must include a regulated design profession to ensure continuity of protection for the consumer and to ensure that the whole industry delivers a quality built environment that includes the required level of health and safety for the community.

A report by a Queensland industry taskforce in 2005, managed by Engineers Australia and titled “Getting It Right The First Time”, estimated that 60 – 90% of contract variations in the construction industry occur to ‘poor documentation’. The report estimated that the annual cost of inadequate documentation to the Australian construction industry was 10 – 15% of the all project costs. This equates to $12b lost to the national economy every year.

Of course, this amount includes projects done by architects and engineers as well as building designers – both licensed and unlicensed – but it does point to a market failure which needs the whole industry to work hard to rectify.

3. NATIONAL OPERATION OF BUILDING DESIGN PRACTICES

Three State governments – Tasmania, Queensland and Victoria – currently regulate the building design profession. Each of these jurisdictions has different requirements and contrasting systems. The remaining states have, at the present, no regulation of building designers. (Refer Item 6 for further comment)

4. EXISTING LICENSING MODELS

A. Queensland

Under the Queensland Building Services Act, building designers are licensed as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Level/Scope of Work</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Rise</td>
<td>Class 1 &amp; 10</td>
<td>AQF 4 + 2 years exp</td>
</tr>
<tr>
<td>Medium Rise</td>
<td>Class 1 &amp; 10, Class 2 – 9 to 2 storeys with max floor area of 2000 sm</td>
<td>AQF 5 + 2 years exp</td>
</tr>
<tr>
<td>Open</td>
<td>Class 1 &amp; 10, Class 2 – 9</td>
<td>AQF 6 + 3 years exp</td>
</tr>
</tbody>
</table>
B. Victoria

In Victoria, building designers are registered by the Building Practitioners Board in the following categories:

<table>
<thead>
<tr>
<th>Class</th>
<th>Level/Scope of Work</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draftsperson – Building Design – Architectural (DP-AD)</td>
<td>All classes</td>
<td>AQF 6 + 1 years exp</td>
</tr>
</tbody>
</table>

C. Tasmania

Under the Department of Justice, building designers are accredited as Building Designer in the following categories:

<table>
<thead>
<tr>
<th>Class</th>
<th>Level/Scope of Work</th>
<th>Qualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architectural Domestic</td>
<td>Class 1 &amp; 10</td>
<td>AQF 4 + 2 years exp</td>
</tr>
<tr>
<td>Architectural Limited</td>
<td>Class 1 &amp; 10 Class 2 – 9 to 2 storeys with max floor area of 2000 sm</td>
<td>AQF 5 + 2 years exp</td>
</tr>
<tr>
<td>Architectural Restricted</td>
<td>Class 1 &amp; 10 Class 2 – 9 to 3 storeys with max floor area of 2000 sm</td>
<td>AQF 6 + 3 years exp</td>
</tr>
</tbody>
</table>

5. LICENCE FEES

The licence fees for building designers vary from state to state and are dependent on the licence category and some are quite complex in their understanding. We would recommend that a visit to each state’s licensing website would provide a clearer understanding of the various fees applicable to each state.

6. PROPOSED LICENSING MODELS

A. New South Wales

It has been discussed in NSW with the Building Professionals Board (BPB) the introduction of building designer licensing / registration system with the preferred model being a 3 tiered system similar to that which currently operates in Queensland.

B. Northern Territory

The Northern Territory government is also in talks with building designers in anticipation of introducing licensing in the near future. Again, the preferred method of licensing is the 3 tier system that currently operates in Queensland.

C. Western and South Australia
These two states are only in the early stages of consideration of building designer licensing and one would expect that as the other states adopt licensing, that they too would accelerate the process.

7. **NUMBER OF BUILDING DESIGNERS IN AUSTRALIA**

The actual number of building designers operating across Australia would need to be confirmed with the relevant authorities but the following is an estimate of both licensed and unlicensed building designers in each state:

<table>
<thead>
<tr>
<th>State</th>
<th>Licensed</th>
<th>Unlicensed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>450</td>
<td></td>
</tr>
<tr>
<td>Queensland</td>
<td>1000</td>
<td></td>
</tr>
<tr>
<td>Victoria</td>
<td>1600</td>
<td></td>
</tr>
<tr>
<td>New South Wales</td>
<td>2500</td>
<td></td>
</tr>
<tr>
<td>Northern Territory</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Western Australia</td>
<td>600</td>
<td></td>
</tr>
<tr>
<td>South Australia</td>
<td>400</td>
<td></td>
</tr>
<tr>
<td>ACT</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>3050</strong></td>
<td><strong>3600</strong></td>
</tr>
</tbody>
</table>

8. **NATIONAL TRAINING PACKAGE**

The BDA, working with the Construction and Property Services Industry Skills Council (CPSISC) was recently involved in the development of the new Building design Training packages. In 2012, the Diploma, Graduate Certificate and Graduate Diploma were introduced to the national curriculum for TAFE and other training providers. These qualifications, which are competency based, specifically relate to building designers as distinct to the now defunct ‘architectural technology’ courses.

The BDA is currently working with CPSISC in developing the Certificate IV in Building design Drafting and on completion of this qualification there will be a suite of qualifications that provide a career path for building designers.

It is possible to view the competency standards on the CPSISC website.

9. **BDA LICENSING SYSTEM PREFERENCE**

The BDA has a policy that each individual member state should be free to determine its own preference in regards to licensing in their particular state, however, it would be fair to say that with the introduction of the Building Design Training Packages the majority of BDA member states have shown a preference for a tiered system that allows licensing for low rise/medium rise at the Diploma level of qualification (AQF 5) and an open category with the Graduate Certificate and/or Diploma (AQF 8) as the qualification level. Both of these levels of qualification would be accompanied by an appropriate period of experience.
10. SUMMARY

In summary, the BDA is fully supportive of establishing a licensing scheme for building designers within the NSW and is prepared to work closely with your department towards this goal. We also are supportive of a system that is comparable to those in Queensland and Tasmania.

Should you wish to discuss this issue further, please do not hesitate to contact the writer.

Kind Regards

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