

Summary of Selected Complaints & Investigations

Edition 5: March 2012

This Summary describes case studies of complaints made about the conduct of accredited certifiers. These case studies can assist and educate stakeholders involved in the certification process.



**Building
Professionals
Board**

Case study 1: Compliance with BCA – access for people with disabilities

The complaint or issue

The Board received a complaint that an accredited certifier issued a construction certificate (CC) where the plans, endorsed as forming part of the CC, did not comply with the requirements of Part D3 of the Building Code of Australia (BCA) relating to access for people with disabilities.

Details

A CC was issued for a building containing two restaurants, a shop and car parking that included accessible car spaces. Access for disabled persons was provided to the main point of entry from the disabled car parking spaces at the rear of the building. However, access was not provided to the building from the allotment boundary from the main point of entry (of the allotment boundary).

In issuing the CC, the accredited certifier determined the principal place of public entry to be at the rear of the building.

Findings and outcome

The 2007 BCA was the applicable version of the BCA at the date the applications were lodged for the CC. Clause D3.2(c)(i) of that BCA requires that external access to a building required to be accessible must be provided from the allotment boundary at the main points of entry.

Clause 145(1)(b) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) prevents a certifying authority issuing a CC for building work unless the proposed building will comply with the relevant requirements of the BCA.

The BCA requires that access for persons with disabilities must be provided to the main points of entry to a building. Upon investigation, it was established that the entrance to the front main point of entry to the ground floor of the building was not accessible from the allotment boundary, as required by Part D3 the BCA.

The Board found the allegation to be proven and the certifier was reprimanded and fined \$3,000.

REMINDER: In determining building compliance with BCA provisions relating to access for people with disabilities, certifiers should ensure external access to a new building is provided in accordance with the requirements of D3.2 of the BCA.

For existing buildings, certifiers need to have regard to the requirements of the Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards). Satisfying these requirements can be achieved by demonstrating compliance with the DTS provisions, the performance requirements or a combination of both. In exceptional circumstances an application can be made for an exemption under the Premises Standards on grounds of unjustifiable hardship.

Case study 2: Issue of CDC for development not compliant with tree removal provisions

The complaint or issue

An accredited certifier issued a complying development certificate (CDC) for a development that did not comply with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP), particularly in regard to tree removal provisions.

Details

A CDC was issued by an accredited certifier for alterations and additions to a dwelling and a swimming pool. A tree, taller than six metres, was located within three metres of the proposed pool.

A permit under the Codes SEPP or development consent was not obtained for the removal or pruning of the tree prior to the issue of the CDC. An application with the local council to have the tree removed was lodged after the CDC was issued. This was refused. An amended CDC was issued showing the location of the pool as being six metres from the tree.

Findings and outcome

The development cannot be considered complying development as it fails to comply with clause 1.18(1)(h) of the Codes SEPP. The clause requires that an appropriate permit or development approval be obtained to remove or prune a tree or vegetation from the site prior to the issuing of a CDC.

In accordance with clauses 3.6A and 3A.7 of the SEPP, a permit or approval is not required where the tree/s are within three metres of the proposed development and less than six metres high and not listed on a significant tree register or register of significant trees kept by the council.

Given the tree's height and location relative to the proposed development, a permit or development consent is required. The Board's investigation found no permit or development consent was obtained for the removal of the tree prior to the issue of the CDC; the certifier's actions, therefore, contravened section 85A(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which requires that in evaluating an application for a CDC, an accredited certifier must consider and determine whether or not the proposed development complies with the relevant development standard.

The certifier advised during the investigation that the proximity of the tree to the proposed swimming pool was overlooked during the site inspection and assessment of the application for the CDC. The certifier has since taken prompt action to improve administrative procedures in relation to the assessment of applications for CDCs.

An amended CDC was issued showing a relocated swimming pool approximately six metres from the tree.

The allegation was proven and the accredited certifier was cautioned by the Board.

REMINDER: Certifiers should carefully check the development standards of the relevant planning instrument to determine whether the development is complying development.

Case study 3: Role of the PCA in ensuring compliance with the Building Code of Australia

The complaint or issue

The accredited certifier issued an interim occupation certificate (OC) without ensuring compliance with the BCA, principally in respect to the provision of ventilation, fire safety, egress, balustrades in fire stairs, and the provision of toilet facilities, including those for people with disabilities.

Details

An interim OC was issued by an accredited certifier for the construction of a new multi-storey commercial building with associated basement car parking. In issuing the interim OC, the certifier failed to give proper regard to whether the building would not constitute a hazard to the health and safety of the occupants and the suitability of the building for use or occupation in accordance with its classification under the BCA. The Board found there were life, health and safety issues with the building.

Findings and outcome

The Board's investigators conducted a number of inspections of the development, finding that:

- Air conditioning condensers and duct work for the fresh air intake of the air conditioning system had not been installed. Some floors of the building and sanitary facilities had no adequate means of ventilation in contravention of clause F4.5 of the BCA.
- The building was not equipped with the sanitary facilities required in Part F2 of the BCA.
- An accessible sanitary facility was not provided in accordance with clause F2.4 of the BCA.
- The effective operational capacity of window drenchers was compromised by the location of transoms, contravening clause C3.4 of the BCA.
- The certifier did not ensure that the commissioning of the fire pumps was complete.
- Balustrade openings and its non-continuous construction contravened clause D2.16 of the BCA.
- The glass door hardware for the required egress to the fire isolated stairway contravened clause D2.21 of the BCA.
- Numerous PVC pipes that penetrated through the ground floor fire-rated slab were not protected as required by clause C3.12 of the BCA.

Given the above issues, the Board determined that the certifier contravened clause 154(1) of the EP&A Regulation which states an interim OC must not be issued unless the building will not constitute a hazard to the health or safety of the occupants of the building.

The certifier failed to adequately inspect the building and take appropriate action as the principal certifying authority (PCA). The certifier failed to exercise reasonable care and attention in carrying out the role and duties of a PCA.

The certifier was reprimanded, suspended for two months and fined \$10,000.

REMINDER: The PCA needs to be vigilant in determining whether an interim OC can be issued. Critical life, health and safety requirements of the BCA must be in place.

Case study 4: Timely and appropriate action on unauthorised building work

The complaint or issue

An accredited certifier engaged as the PCA failed to take timely and appropriate action in relation to unauthorised building work and ensure the development was constructed in accordance with the development consent.

Details

An accredited certifier was engaged as the PCA for a proposed development that involved a new dwelling, in-ground swimming pool, outbuilding and front fence. The PCA agreed to another certifier undertaking critical stage inspections of the building work on the PCA's behalf. Six critical stage inspections were conducted by the second certifier.

In a number of these inspections, the second certifier did not approve the building works. In these instances, the PCA relied on a structural engineer, who was not accredited, to provide certification.

Following the third critical stage inspection, the second accredited certifier reported that the works were not in accordance with the approved plans. The PCA issued a notice of a proposed order on the owner to cease undertaking works that were not in accordance with the development consent. The local council was provided with a copy of the notice.

An application was subsequently made under section 96 of the EP&A Act to the council to modify the development consent to comply with the as-built construction. The local council conducted an inspection and found there were further examples of building work which did not comply with the development consent. The local council issued a notice of proposed order to the owner.

Findings and outcome

The Board's investigation revealed that prior to the first critical stage inspection, the site was excavated contrary to the requirements of the development consent and a concrete pond/pool and retaining wall had been constructed at the front of the dwelling in the area where the natural ground level was to be maintained.

The design of the swimming pool had also been changed from one pool to two pools and the configuration of the lower ground floor level had been enlarged and did not comply with the development consent.

When actually conducted, inspections of footings, ground floor slab and outbuilding slab would have revealed inconsistencies with the development consent and the CC. The over excavation of the site, contrary to the development consent, would have been clearly evident.

The certifier conducting the critical stage inspections on behalf of the PCA did not approve the building works after the second site visit. In this instance, the PCA relied on an unaccredited engineer to provide certification. Further unauthorised building works were identified during the third visit to the site, when inspection of the swimming pool steel revealed that it did not comply with the development consent. Only then did the PCA issue a notice of a proposed order to cease undertaking works.



It was the PCA's responsibility to ensure that any critical stage inspections conducted on the PCA's behalf addressed not only the stage of construction that prompted the inspection, but also general compliance with the development consent.

The PCA did not act in the public interest by failing to identify the extent of any unauthorised building work and taking appropriate action in a timely manner in relation to unauthorised building work. There was also failure to exercise reasonable care and attention in carrying out duties.

The Board found the allegation proven. The certifier was reprimanded and fined \$1,000.

REMINDER: An accredited certifier who fails to take timely and appropriate action to address non-compliance issues may fall short of the standards expected and may be found guilty of unsatisfactory professional conduct.

Where a PCA agrees to another accredited certifier undertaking inspections on the PCA's behalf, the PCA should ensure the certifier is aware of what the PCA requires the certifier to inspect. Inspections may be conducted by another accredited certifier except for the final critical stage inspection which must be carried out by the PCA.

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March 2012

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