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KEY CHANGES TO BUILDING REGULATION

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to the Australian Institute of Building Surveyors Annual Conference
12-13 August 2013

Chapter 8 of the NSW Government's *A New Planning System for NSW – White Paper (White Paper)* and the *Planning Bill 2013 – Exposure Draft (Planning Bill)* contain proposed amendments to the scheme for building regulation and certification in NSW.

The White Paper identifies the current development assessment and post-consent processes as a source of unnecessary delay and cost of building in NSW. In relation to issues of building and construction certification, it is proposed to increase the efficiency of the planning approval process by refocusing the attention of consent authorities to planning matters, leaving consideration of building and subdivision work to certifiers at the construction certificate stage.

Combining the roles of certifying authorities

Under the present provisions of the *Environmental Planning & Assessment Act 1979 (EPA Act)*, a developer must appoint separate certifying authorities to issue different kinds of certificates. Particularly, occupation certificates and subdivision certificates can only be issued by a principal certifying authority, who cannot be the same person as the certifier who issues a construction certificate or a complying development certificate. The White Paper acknowledges that this separation is confusing.

Section 8.3 of the Planning Bill proposes to combine the role of the principal certifying authority into that of the certifier so that all aspects of building or subdivision work are certified by the one certifying authority.

Specifying clearer roles for certifiers

The White Paper identifies a need to clarify the roles and responsibilities of the various parties involved in the planning process. Section 8.3 of the Planning Bill identifies the functions of the new building certifiers and subdivision certifiers.

A building certifier has the following functions:

- issuing construction certificates for building work,

- carrying out inspections of building work,
- issuing occupation certificates,
- preparing and providing building manuals to the owners of buildings,
- any other function conferred or imposed on a building certifier under this or any other Act.

A subdivision certifier has the following functions:

- issuing subdivision works certificates for subdivision work,
- carrying out inspections of subdivision work,
- issuing subdivision certificates,
- any other function conferred or imposed on a subdivision certifier under this or any other Act.

'Compliance certificate (completion)' for non-occupiable building works

The White Paper proposes the introduction of a requirement for a new '*compliance certificate (completion)*' that would certify the satisfactory completion of those parts of a building that have been the subject of a construction certificate or complying development certificate but that cannot be occupied. The example given in the White Paper is that of swimming pools and fences.

Currently, the only reference to this new certificate in the Planning Bill is in Section 8.7(2)(a)(ii), which provides that an occupation certificate is not required for the commencement of the occupation or use of a new building '*that is the subject of a compliance certificate for the completion of the erection of the new building in circumstances in which that certificate is an authorised alternative to an occupation certificate (such as a swimming pool or altered part of an existing building)*'.

Increasing the options for certifying subdivision and subdivision works

Section 109D(1)(d) of the EPA Act sets out who is authorised to issue a subdivision certificate and in what circumstances.

The White Paper proposes to increase efficiency in this area by increasing the circumstances where certifiers are authorised to issue subdivision certificates and subdivision works certificates (the latter certificate replacing the existing construction certificate for subdivision work). The Planning Bill does not specify the circumstances; presumably this will be dealt with by regulations.

Reducing the limit on liability arising from building and subdivision work

At present, certifying authorities can be legally liable for defective residential building work up to four years after a licenced builder ceases to be liable for a breach of statutory warranty under *the Home Building Act 1989*. Certifiers, who are often joined to actions as a result of the compulsory insurance they hold, successfully lobbied to have the liability periods aligned.

Section 8.18 of the Planning Bill reduces the time limitation for civil action for loss or damage arising out of or in connection with defective residential building or

subdivision work to 6 years (down from 10), whilst leaving the limitation period for all other building work unchanged at 10 years.

NSW specific technical codes

The White Paper states that the Planning Bill will include scope for '*NSW-specific technical codes to specify standards for unique and unusual buildings, structures and related developments (eg matters not covered by the Building Code of Australia).*'

Clause 8.1 (a) of Schedule 8 of the Planning Bill provides that regulations may make provision for or with respect to the '*requirements to comply with provisions of the Building Code of Australia or other specified standards in relation to building work or subdivision work*'.

The preparation of building manuals for certain occupied buildings

Section 8.20(1) of the Planning Bill requires a certifier who issues an occupation certificate for a certain class of building to prepare and provide the owner with a building manual in accordance with the regulations.

The note to Section 8.20 states that '*Classes 1B to 9 of the BCA are currently proposed to be covered by the regulations*'. Accordingly an owner's building manual will be necessary for all buildings other than single dwellings and associated buildings such as carports and garages.

Amongst other things, the White Paper states that the owner's building manual will incorporate the information currently included in the fire safety schedule. This is not reflected in the Planning Bill but presumably will be dealt with by regulation.

Reliance on specialist certification and advice

A key feature of the proposed changes is for a principal certifying authority to rely upon compliance certificates from accredited specialists. This includes professions such as engineers, fire protection designers, energy efficiency consultants and many more. The proposed changes mean the principal certifying authority can rely upon certification that designs and constructions comply with the relevant requirements of the BCA and other standards.

It is also proposed to improve support mechanisms for certifying authorities in respect of complex and high risk technical matters, eg when there may be a dispute or doubt about the correct interpretation of provisions in the BCA. It is proposed that there be peer review panels by specialists and qualified individuals for complex matters.

In relation to the requirement that only Fire and Rescue NSW be referred to for comment for certain fire safety alternative solutions prior to issue of certificates, it is proposed that the role and input of accredited fire engineers be expended.