



Dealing with errors in a certified building permit application

A recent Building and Energy audit program identified a need to clarify the approach for dealing with errors that may have been detected in certified building permit applications and their accompanying documents.

It was found that some permit authorities were uncertain about their powers in respect to certified applications.

This Industry Bulletin, which replaces IB 006/2012, is intended to provide some guidance for permit authorities in this matter.

While the *Building Act 2011* (the Act) does not create a duty for a permit authority to check the accuracy of a fact or the soundness of an opinion asserted in a Certificate of Design Compliance (CDC), it may have otherwise formed a view that there is an error as to compliance in a specific CDC or any other documents accompanying a building permit application. This may occur where the non-compliance is clear.

The State Administrative Tribunal (SAT), in its decision of *Miller and City of Melville [2012] WASAT 156*, clarifies the process for dealing with a difference of opinion that may arise if a permit authority forms the view that there is an error in a certified building permit application. The guidance from SAT includes the following points:

- The Act contemplates that applications for a building permit will not be subjected to more than one analysis to ascertain compliance with relevant building standards. This analysis is carried out by the registered building surveyor that has signed the Certificate of Design Compliance (CDC) accompanying the building permit application.
- In the normal course of events a permit authority will consider a certified application based on the relevant matters outlined in section 20 of the Act.
- If in the course of considering a building permit application the permit authority forms a genuine belief that there is an error as to compliance

(with relevant building standards), it would be consistent with the Act if the permit authority used its powers under section 22 of the Act to refuse to grant the building permit.

Prior to exercising the power to not grant a building permit, a permit authority should consider options that may resolve the error. For example by:

1. engaging in informal discussions with the certifying building surveyor (in the first instance) and/or the applicant (if the certifier cannot be contacted);
2. submitting a formal request for any document or further information under section 18 of the Act.

In the event that a permit authority decides to not grant a building permit it must:

1. follow the notification process under section 24 of the Act; and
2. refund to the applicant the Building Services Levy in accordance with regulation 16 of the *Building Services (Compliant Resolution and Administration) Regulations 2011*.

A person who applies for a building permit may apply to the State Administrative Tribunal for a review of the decision of the permit authority to refuse to grant the building permit.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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