



Building newsflash number 380

Approval of existing building work

Purpose

To provide guidance on how to assess existing building work that has been carried out without a building development approval or without having the required inspections undertaken.

Background

This newsflash supersedes newsflash 49 (8 March 2000) on this topic. The *Integrated Planning Act 1997* (IPA) requires that building work must not start without a building development approval and that a building development approval authorises assessable development to occur.

The approval and assessment of non-approved building work that is not to be demolished or removed should be finalised in close liaison with the relevant local government. The approval status of all building work should be finalised to ensure the community can be confident that building work complies with the *Building Act 1975* (BA) and to ensure there are proper records for all building work. The IPA does not prohibit a building development approval being issued for existing building work.

Considerations of whether to approve existing building work that has been undertaken illegally must include compliance with the BA. The approval of building work that has been undertaken illegally does not remove the ability of the relevant local government to take enforcement actions or prosecute persons for activities related to the illegal building work.

Legislation

Various pieces of legislation prohibit the issuing of a building development approval until certain requirements have been met.

Building and Construction Industry (Portable Long Service Leave) Act 1991

The *Building and Construction Industry (Portable Long Service Leave) Act 1991*, prohibits a building development approval from being issued unless evidence of payment of, or exemption from, the portable long service leave levy on the approved Notification and payment form has firstly been sighted (s.77). The payment and form is only required if the value of the work is \$80,000 or more.

Workplace Health and Safety Regulation 2008

The Workplace Health and Safety Regulation 2008 (s.129) requires the payment of a Workplace Health and Safety notification fee at the same time as the Portable Long Service Leave levy payment is made, if the value of the work is \$80,000 or more.

Queensland Building Services Authority Act 1991

The *Queensland Building Services Authority Act 1991* provides that a building development approval in respect of residential construction work cannot be issued until satisfactory evidence has been sighted that the appropriate insurance premium has been paid, or that no insurance premium is payable (s.68).

If a licensed contractor performed the work, the principal contractor (typically the applicant) should pay the insurance fee to the Queensland Building Services Authority (QBSA). Alternatively, the applicant could seek a ruling that no premium is payable. If the QBSA decides that no insurance premium is payable, it may also advise that, because the work was carried out without approval, no cover is provided under the statutory insurance scheme for defects which may exist or occur.

Further obligations for assessing and deciding building development applications

Sufficient details must be provided to enable the building certifier to assess the application against the current building assessment provisions. Subject to s.37 and 61 of the BA, the current building assessment provisions must be applied. Under s.36 of the BA, it is otherwise not appropriate to apply previous building assessment provisions that were in force when the building was built. When assessing an application, all assessments and procedures that are normally applicable to a building development



application for proposed building work should be undertaken. This would include submission of necessary drawings, plans, specifications, computations, reports, certificates and other required documentation. It would also include awaiting the issue of any development permits required under a planning scheme and any required referral agency responses.

Building certifiers have a responsibility to ensure that building work complies with the building assessment provisions. This includes inspection of the work to the degree required to ensure compliance has been achieved. Inspections must be carried out either directly or through a competent person. Building certifiers should not approve existing building work by endorsing a certificate on the basis that inspections could not be carried out. To do so could constitute a breach of the code of conduct for building certifiers. The appropriate procedure would be for the certifier to require the applicant to provide sufficient evidence of compliance.

Appropriate evidence and forms of assistance

Standard of evidence

Certifiers should be satisfied of compliance before approving the relevant work and they may satisfy themselves of compliance using any type of evidence that is suitable to the matter to be decided. The standard of evidence required by building certifiers may vary depending on the importance of the aspect or stage and the context. For example, a certifier may reasonably be satisfied of a home's insulation R-values by relying on purchase receipts and limited observations, whereas for the structural or fire safety aspects of a multistorey building, invasive checking and other follow-up investigations may be required.

Types of evidence

Building certifiers may use observations, documentary evidence, such as reliable photographs and receipts, testimony of relevant persons and expert advice to help establish whether or not existing building work complies with the relevant requirements of the BA. Appropriate care needs to be taken to establish whether persons providing evidence have sufficient knowledge and credibility.

Inspections/observations

Technologies which allow observations to be made with minimal intrusive investigation of existing construction include pipe/cavity cameras, ground penetrating radars, pulse induction cover-meters, wall x-rays and concrete test hammers.

More invasive inspections include the removal of building material (for example plasterboard from a wall) to enable concealed components to be inspected. Where foundations/footings need to be investigated, portable geotechnical testing equipment or cone penetration tests and soil permeability tests may be of assistance.

Testimony of builders or other professionals

Information from other professionals who may have previously dealt with the site or building in question may also be useful, as may be requesting a statutory declaration to support their statements. In addition, other tradespersons or inspectors (e.g. plumbing inspectors or other local or state government inspectors) who were involved with the building work may provide corroborating evidence to confirm matters of interest.

Documents

Documents associated with the building, such as receipts for products or services, contracts, photographs or delivery statements may assist in indicating whether an aspect complies with the BA.

Actions where the certifier is not satisfied the work complies

The building certifier must be satisfied that the building work is compliant before it can be approved, noting that conditions of approval can be applied if necessary and appropriate. For example, if the documentation submitted for approval complies with the legislative requirements and it can be determined the building work is constructed in accordance with that documentation, the approval could be issued with conditions applied if necessary. However, if the documentation submitted for approval does not comply with the legislative requirements or if the building work is not constructed in accordance with that documentation (or if it is unclear), additional information should be requested. The application could also be refused or, if appropriate, approved subject to any necessary and appropriate conditions.



Where there is evidence of non-compliance, the building certifier must advise the applicant of the non-compliance and direct any necessary remedial works to be undertaken either before granting an approval or, if appropriate, as a condition of approval.

If the applicant refuses to undertake required remedial work or if the building work cannot be made to comply or if it is not possible to determine whether the building work complies, the matter should be referred to the local government for possible enforcement action or prosecution.

Issuing a building development approval

Where a building development approval is issued, the approved building work must comply with all relevant requirements of the BA and IPA. The decision notice should include the following:

- i) conditions identifying any work required to bring the building or structure into compliance
- ii) if the work involves a single detached dwelling, a class 10 building or structure, or a swimming pool, a condition requiring notice for inspection to be given at the mandatory stages (even though in many instances of existing building work, one inspection could cover all stages of mandatory inspection)
- iii) a condition for a notice for inspection to be given for any other appropriate stages (e.g. for rectification work), if applicable
- iv) any other conditions considered necessary, such as:
 - requiring test bores and a foundation report to be provided
 - requiring excavation adjacent to footings at sample locations to inspect the foundation material and footing depth (e.g. check that the size of carport column footings provide adequate resistance to uplift)
 - requiring the building work to be prepared for inspection e.g. removal of sheeting to inspect a sample(s) of cavity bracing and tie down
 - requiring independent certification of particular elements by competent persons to satisfy the building certifier that compliance has been achieved.

The decision notice should also include a statement that the approval relates to existing building work. For example, 'the building work was carried out without an approval or any inspections by a building certifier' and any certificate of classification or inspection certificate issued should include a statement covering the following aspects:

- the building work was carried out prior to the issue of a development permit
- details of inspections, including how any mandatory inspections were carried out
- the reliance (if any) placed on certification or evidence by other parties.

Contact for further information

Department of Infrastructure and Planning
Building Codes Queensland Division

tel +61 7 3239 6369

buildingcodes@dip.qld.gov.au

DISCLAIMER: The information contained in this Newsflash is provided by the State of Queensland in good faith. The material is general in nature and before relying on the material in any important matter, users should carefully evaluate its accuracy, currency, completeness and relevance for their purpose. It is not intended as a substitute for consulting the relevant legislation or for obtaining appropriate professional advice relevant to your particular circumstances. The State of Queensland cannot accept responsibility or liability for any loss, damage, cost or expense you might incur as a result of the use of or reliance on information contained in this Newsflash. It is not intended to be, and should not be relied upon as the ultimate and/or complete source of information