

ADVISORY NOTICE

BUILDING

10/14

Advisory Notices are issued to assist in the interpretation of the Development Act 1993

May 2014

PROFESSIONAL: Retention of documentation relating to consents issued

A key risk for councils and private certifiers is not being able to demonstrate compliance with the *Development Act 1993* and the *Development Regulations 2008*. This could arise in a number of circumstances such as a complaint investigation, coronial investigation, or legal action by a person questioning the validity of a building rules consent.

The *Development Act 1993* and the *Development Regulations 2008* contain a number of requirements relating to building work, but the major area relates to the processing and assessment of applications for building rules consent (and complying development plan consent) by both relevant authorities and private certifiers exercising the functions of a relevant authority.

To assist councils and private certifiers in deciding what level of documentation they should be keeping, the following tables are provided. These tables suggest a **minimum level** of documentation that councils and private certifiers should retain, either electronically or hard copy, which could be used as evidence to demonstrate compliance.

GENERAL ADMINISTRATION	Legislation reference	Advisory Notice	Comment
Prescribed qualifications and authorised delegations	S30, S101(2), R87, R91, R110		Must be current for consents to be valid
Private certifier registration	R93A		Must be current for consents to be valid
Professional indemnity insurance cover	S100, R93 and R93A		Must be current for consents to be valid
Register/records of applications processed	R98		No format is specified but register contents are prescribed
Systematic filing of documents and records pertaining to individual applications	R102	18/04	Able to readily produce or obtain all assessment records relating to a specific application
Collection and distribution of building rules assessment levy pertaining to each assessment	R95, Schedules 6 and 7		Calculation of levy and record of payment to the Minister



LOGGING OF APPLICATIONS	Legislation reference	Advisory Notice	Comment
Engagement of private certifier/council	R15, R90		Signed record of application/engagement For private certifier - owner of the land has been notified or given approval.
Private certifier notification to council of engagement	S93(1)(a)		Copy of email or letter on file
Construction Industry Training Fund levy	R79		Record that payment was made prior to issuing building rules consent
Building Indemnity Insurance cover	R21	16/02	Domestic building work requirement – where a licensed builder is nominated

ASSESSMENT OF APPLICATIONS	Legislation reference	Advisory Notice	Comment
Development plan consent issued for development	R89(2)		Consent and stamped plans have been sighted and conditions taken into account
Building rules consent only	Sch 1A		Not excluded by Sch 1A, item 1(4)
Development plan applications for residential code development	Sch 4		Council was provided with fees and information and council response
Building rules assessments	S33(1)(b) S36(4) R89(1)(a)		Any assessment notes, reports or certificates relied on, that are relevant to an application.
Building rules assessments triggered by Development plan maps	R78, R78B	02/13	Identification of relevant map(s) and nature of assessment required
Referrals to other authorities undertaken	R28		Reports received and decisions made in relation to referred matters
Applications made to BRAC for an opinion or concurrence	S36, R28		Outcome and subsequent decisions
Alternative solution decisions		05/03	Evidence of suitability, reasons substantiating compliance with performance requirements, and identified risks are recorded
Monitoring of outstanding information	R19		Timely processing of applications - requests, follow up and responses received
Roof framing checklist	R74A, Sch 5, item 1(1)(g)	09/12	Verification that details in Minister's Schedule 5 roof framing checklist received
Independent technical experts	R85 & R88	11/05	Verification of expertise and suitability of certification relied on
Assessment of existing buildings	S53A		Record reasons for concerns, and discretion exercised



ISSUING CONSENTS	Legislation reference	Advisory Notice	Comment
Decision notification	S93(b)(i), R42		Issued in required format. Applicant notified
Conditions and reasons	R42(3)		Reasons for conditions imposed provides clarity for applicant
Assignment of classification	S66, R42(6), R82	32/02	May need to provide reasons for assigning classification(s) to relevant building area(s)
Currency of any relevant technical documents and standards	R4, R106		Documents referred to in order to check compliance with the Building Rules current at time of lodgement
Essential safety provisions to be installed and maintained	R76, Sch 16	33/03	Forms 1, 2 and 3 filled out and issued with consent documentation
Statement of Compliance	R42(7), R83AB, Sch 19		Schedule 19A form issued with consent documentation
Certificate of consistency	R92(2)(e) Sch 22A	09/14	Verifying consents are consistent with each other
Endorsement of documents that form part of a building rules consent and/or a development plan consent	R92(2), R47		Retain a list of the plans, drawings, specifications, documents and information lodged by the applicant and endorsed as forming part of the approved consent
Private certifier notification to council	S93(1)(b), S93(2) & R47	15/04	Verification that the private certifier has notified council of any consents issued and of any changes for compliance

It should be noted that these tables are based on the most commonly processed building applications. As a result, for any one application, there may be other documentation relevant to the specific legislative requirements for the application (such as those relating to Minister’s Specifications) that have not been included in the tables but which are nevertheless sensible to retain. The onus is on a council or private certifier to determine what documents should be retained, based on the specific circumstances of a building application.

Other documents that might also be considered for retention on file include:

- Emails and/or letters sent and received
- Notes to file
- Copies of industry information or advice
- Advice from other building practitioners on specific matters
- Advice received and relied on

It is appreciated that some information can be superseded by later information received (such as changing framing from steel to timber or vice versa), or a document may be exploring options that eventually are not relevant to the final consent. The extent to which this sort of information is retained requires a risk assessment of its relevance to the final decision. Some practitioners choose to keep everything, whilst others are more selective about what they keep.



Further information

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