

Building Permit Audit

Findings and Actions

Industry Report

September 2014

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1 Background

The Building Audit Program

The Building Audit Program is a defined business unit within the Compliance and Performance Division of the Victorian Building Authority (VBA). It is designed to undertake the performance audit function, examining building work carried out by registered building practitioners.

Performance audits, which are carried out under the powers detailed in Part 13, Division 1A of the *Building Act 1993* (the Act), examine work by any registered building practitioner. This includes physical work at a building site, building permit documentation, administrative procedures and practitioner conduct.

Building Permit Audit

From late 2012 to mid-2014, the program undertook an audit to measure the compliance of practitioners during the building permit process. The audit specifically focused on material the relevant building surveyor (RBS) receives, considers, records and submits to council. The scope of this audit was on documents contained in the building permit file and did not include the review of the physical building work.

The purpose of this report is to communicate findings to stakeholders with a view to:

- highlight opportunities for improvement to practices
- offer guidance to achieve compliance in the future
- highlight opportunities for targeted training and education

The findings of this audit will also assist the VBA in undertaking its regulatory functions, including enforcing the law, registering practitioners, and setting legislative standards.

Additional to this report, each building surveyor whose permit files were audited at council will receive an individual report detailing specific compliance levels and documenting actions to ensure compliance. It is expected that the audited RBS will use the findings to develop processes and tools to ensure compliance is achieved in the future.

The VBA will seek assurance that the audited RBS has undertaken the prescribed compliance actions in an appropriate way and in cases where this has not occurred, disciplinary action may be taken.

1.1 Audit scope

Phase one: Building permit files at councils

The first phase consisted of auditing 1000 building permit files at 20 councils, both metro and regional. The objective was to assess the level of compliance and identify issues in the building permit system.

The permits were selected via random sampling, with controls to ensure proportions of domestic and commercial work reflected proportions of permits issued in the municipality, and work undertaken by municipal building surveyors (MBS) and private building surveyors (PBS) was represented. The building permits audited were issued between January 2010 and December 2012, by a total of 212 registered building surveyors. (See *Appendix 1 for more information on the profile of permits audited*).

Analysis of audit results revealed that in 450 of the permit files audited, there was insufficient documented evidence to make a determination on the compliance of at least one item that has a potential impact on health and safety. This prompted a second phase of audits.

Phase two: Building permit files at RBSs' offices

The second phase consisted of auditing specific aspects of 450 building permit files (from the original 1000) held by the RBS. The objective was to more thoroughly assess and mitigate potential impacts to public safety, without sole reliance on the files held at council offices.

The permit files were selected for examination based on risk – specifically, the level of compliance of the file and the potential impact to the health and safety of the public. Audits only considered matters that could pose a high risk of injury to people. The VBA contacted 101 RBSs by email and visited another 42 at their office, in both metro and rural Victoria. The method of audit was determined by the total amount and frequency of observed non-compliance in council files.

The Building Audit Program team worked with the RBSs to address over 1500 possible health and safety risks identified in the first audit with the following results:

- In 95% of instances the RBS was able to demonstrate that there was no impact to the health and safety of the public.
- Where issues were confirmed, the RBS was requested to undertake remedial action.
- Where serious non-compliance was not remedied (less than 1%), the issue is being addressed through the VBA's compliance and enforcement processes, and appropriate action taken.

Audits in both phases were performed by registered building surveyors unlimited.

1.2 Audit criteria

Audit criteria are the aspects of the legislation that building permit files are evaluated against at the time of the audit. The criteria for this audit were designed to include all aspects that the RBS needs to consider and record in the building permit file, and submit to council, according to the legislation.

1.3 Audit checklists

To ensure consistency in considerations, standardised checklists were used to assess the information contained in the building permit files. This audit tool was developed in consultation with representatives of the building surveying profession and the fire authorities. Two types of audit checklists were designed to capture the different requirements of different classes of buildings:

- Classes 1 and 10 – containing 90 items
- Classes 2 to 9 – containing 105 items

The building permit file was assessed against each checklist item and comments were provided where applicable. Compliance ratings relate to both administrative requirements and technical content on the documentation.

A distinction was made between *non-compliance* (clear evidence based on the sighted documentation that the proposed work would not comply with the legislative requirements) and *information missing* (insufficient evidence on the file to make a determination in relation to compliance). Because the legislation, in many instances, provides the building surveyor with discretion as to what information may be required, a rating of *information missing* does not mean that the file is non-compliant; it simply means that compliance was not able to be determined.

The rating system also took into consideration the potential impact of non-compliance (minor or significant) on:

- **health and safety** – potential physical injury sustained by a person
- **consumer detriment** – risk of damage (disadvantage, economic loss or pecuniary loss) sustained by a person
- **integrity of the building permit system** – compliance with building standards, administrative requirements and completion of procedural obligations

1.4 Limitations

Audits limited to documentation

The audits were performed on documentation only. The scope of this audit did not include the review of physical building work.

Staged permits

The legislation provides building surveyors with discretion as to how staged permits are processed and recorded. An inconsistent approach to records management of building permit files decreased transparency and presented significant challenges in establishing compliance. In order to remove some bias from findings, this report only considers ratings for permits with a single stage building project (no stage), or stage 1 of a multiple staged project, resulting in the total sample reduced from 1000 to 962.

2 Findings

2.1 Overall compliance

Of the permit files audited at council, on average 63% of the items assessed in each file were found to be compliant (documentation and technical content). There was not enough evidence to make a determination on compliance for 29% of items (information missing), and 8% of items were not compliant with the legislative framework.

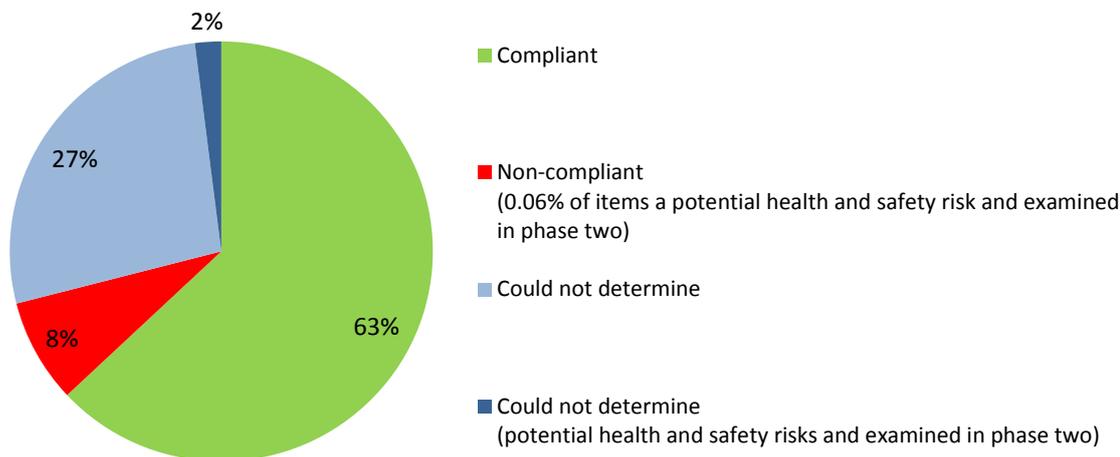


Figure 1: Phase one – overall compliance ratings of applicable items

Compliance was greater for domestic building permit files (65 percent) than commercial (60 percent).

Findings relate to the first phase of audits on the building permit files at council. Observations made during the second phase are not included in this report unless specifically stated.

2.2 Key findings and actions

The table overleaf summarises the key findings of this audit and the actions that will be taken, grouped into four broad thematic areas requiring attention: building permit files at council; drawings; alternative solutions and considerations and determinations by the RBS.

The VBA is committed to taking on a leadership role in enacting and supporting improvements in the industry. Improvements to the building permit system require the active involvement of everyone involved in the building permit process.

The statutory responsibilities of the RBS are defined in the Act and the *Building Regulations 2006* (the Regulations). However, for the building system to be as effective as possible, responsibility is shared with other stakeholders.

This report details what areas need improvement and the actions that are required by the RBS and other parties involved in the building work to ensure compliance with the Act and Regulations. The report also identifies actions that will be taken by the VBA. The VBA encourages stakeholders to develop systems, processes, tools and techniques that are suitable to their operations and help them to deliver on improvements and achieve greater compliance.

The VBA acknowledges the support from industry bodies to improve industry standards and practices, and will work with these stakeholders and local government to support the development and delivery of targeted education and training designed to address the trends of non-compliance identified through this audit.

Timeframes for implementation of actions for the VBA are defined as: short term (ST) - within three months, medium term (MT) - within a year and long term (LT) - one to three years.

| Findings | Compliance actions | | VBA actions* | |
|--|---|--|--|--|
| | Building surveyors | Other stakeholders | Addressing specific compliance requirements | Addressing all compliance requirements |
| <p>Building permit files at council</p> <ul style="list-style-type: none"> • Building permit forms (Form 2) non-compliant - prescribed information not included and/or with errors • Property information and planning information lacking • Lack of documentation on the proposed building work, eg. specifications, methodology, engineer computations, energy reports • No evidence of reports and consents where they should have been obtained prior to the issue of the building permit | <ul style="list-style-type: none"> • Ensure prescribed forms comply with and contain the required information • Only approve building permit applications where documentation is sufficient to demonstrate compliance with legislation • Ensure that relevant certificates, reports and consents are obtained • More rigorous submission of documentation to council (at appointment, after issue of building permit and on completion), within the prescribed timeframes | <p>Designers #</p> <ul style="list-style-type: none"> • Include full details of specifications on the plans, or include a note on the plans referring to detailed supporting documentation <p>Councils</p> <ul style="list-style-type: none"> • Keep a record of all documents submitted by RBSs relating to a building permit • Respond within prescribed or reasonable timeframes to requests for information, reports and consents | <ul style="list-style-type: none"> • Develop additional resources for building surveyors in relation to the building permit documentation submitted to council (ST) • Conduct a targeted audit of work by practitioners based on risks identified in this audit (MT) | <ul style="list-style-type: none"> • Follow up on reports issued to audited RBSs and where required compliance activity has not been implemented, undertake appropriate enforcement action (MT) |
| <p>Drawings</p> <ul style="list-style-type: none"> • Plans omitted entirely (particularly site plans) or inconsistent with the scope of the building work described on the building permit • Building elements not clearly nominated on drawings (eg. no handrail, no gutters), lacking details (eg. dimensions) or with errors (eg. spacing not compliant) • Plans lacking details, eg. construction requirements, specifications | <ul style="list-style-type: none"> • Communicate with the applicant to seek additional information or amended drawings where necessary • Only approve building permit applications where plans are accurate and contain sufficient details to demonstrate compliance with legislation | <p>Designers</p> <ul style="list-style-type: none"> • Provide a full set of drawings, including site plans, with the appropriate details and all other required documentation • Ensure plans demonstrate the building work will comply with the Act, the Regulations and the BCA • Ensure plans clearly differentiate existing building and structures from proposed building work | <ul style="list-style-type: none"> • Conduct an audit of registered designers (MT) • Use data to deliver improvements to the assessment and registration process for designers (LT) • Encourage use of VBA support mechanisms by designers (MT) | <ul style="list-style-type: none"> • Improve existing guidance material and develop additional resources for practitioners and owners (MT) |

Designers include draftpersons, architects, builders and owner-builders

| Findings | Compliance actions | | VBA actions* | |
|---|---|--|---|---|
| | Building surveyors | Other stakeholders | Addressing specific compliance requirements | Addressing all compliance requirements |
| <p>Alternative solutions</p> <ul style="list-style-type: none"> Lack of documentation for the alternative solution: methodology, test reports, specifications of materials used, performance requirement it is meant to satisfy, written determination by the RBS Alternative solutions not prepared and determined by independent persons No evidence of appropriate qualification of persons providing a certificate under section 238 of the Act, relating to compliance of the alternative solution with a fire performance requirement | <ul style="list-style-type: none"> Appropriately check and record all documentation used to make a determination on a proposed alternative solution Issue a written determination on the proposed alternative solution with justification of how the alternative solution meets the performance requirements of the Building Code of Australia (BCA) Ensure that the person preparing the alternative solution is independent of them or their office and has the appropriate qualification(s) | <p>People involved in alternative solutions</p> <ul style="list-style-type: none"> Ensure that the alternative solutions are prepared, assessed and/or certified in compliance with legislative requirements Update processes to incorporate a declaration of involvement in the design, assessment and/or certification of the alternative solution (and statement of relevant qualification and/or registration number) when supplying documentation to the RBS | <ul style="list-style-type: none"> Conduct an audit of alternative solutions (MT) Develop and deliver improvements to registration processes, particularly consider the need to record practitioner skills beyond standard registration (LT) Refer for enforcement action any identified non-compliance relating to alternative solutions (ST) | <ul style="list-style-type: none"> Work with industry and local government to support the development and delivery of targeted education and training packages and tools (MT) Use audit data to inform changes to the legislative framework, including the Regulations, in relation to requirements the building permit process (MT-LT) |
| <p>RBS considerations and determinations</p> <ul style="list-style-type: none"> Lack of information in the file to provide assurance that the RBS could make an informed determination Lack of evidence of consideration of protection work, protection of the public and partial compliance under Regulations 608, 609 and 1011, where it appeared required Lack of evidence of determination by the RBS | <ul style="list-style-type: none"> Only approve building permit applications where documentation is sufficient to make informed decisions on the need or otherwise for protection work, protection of the public, or the need to bring the entire building into conformity with the Regulations Ensure that the relevant notices and certificates are obtained Record evidence of considerations and determinations | <p>Designers</p> <ul style="list-style-type: none"> Provide a full set of drawings, including site plan with the appropriate details and all other required documentation Include details of the protection work and protection of the public measures on the plans | <ul style="list-style-type: none"> Conduct an audit focussing on protection work, protection of the public (MT) | <p><i>* Timeframes for implementation are:</i></p> <ul style="list-style-type: none"> - short term (ST) within three months - medium term (MT) within a year - long term (LT) one to three years |

2.3 Building permit files at council offices

Background

Building permit files at council provide an endorsed record of proposed and completed work. They ensure accountability by documenting approved work and recording RBSs' decisions. They provide transparency for current and future property owners.

Key findings

Observed issues related to building permit files at council included:

- Building permit forms (Form 2) poorly prepared: prescribed fields not completed appropriately and errors on the forms
- Property information and planning information lacking
- Documentation on the building work (specifications, methodology, engineer computations, energy reports) and energy efficiency documentation lacking
- Reports and consents not included in the file

Incomplete documentation can lead to building work being constructed incorrectly and not meeting legislative requirements. This compromises, or has adverse effects on, the assets and infrastructure of authorities, operational requirements of emergency services and the amenity of the community, and can impact the owners.

It is noted that where legislation details the requirements of the RBS to submit evidence of considerations on matters that impact the proposed building work, the legislation does not require the RBS to include evidence that they performed the necessary checks when the matter they assessed is not applicable to the proposed building work.

Subsequent audits of files for the same building permits at the RBSs' offices indicated that the latter files had substantially more information than the files held at council offices. While the files at the RBSs' office may be more complete, there is currently no legislative requirement for them to keep this file for any period of time after completion of the building work.

Key areas for improvement

This section outlines areas identified for improvement. The VBA encourages practitioners and stakeholders to implement the appropriate systems, processes, tools and techniques to help them deliver actions to improve future compliance in these areas.

Councils

- Must keep a record of all documents submitted by the RBS relating to a building permit
- Respond within prescribed or reasonable timeframes to requests for information, reports and consents

RBSs

- Must not approve building permit applications where documentation provided by the owner/owner's agent is not sufficient to demonstrate compliance with legislation
- Must submit all documentation received from the owner/owner's agent as part of the building permit application as well as any relevant supporting documentation such as reports, consents and determinations, to the relevant council, within the prescribed timeframes
- Must submit all relevant and accurate documentation to council upon completion of the building permit and take appropriate steps to close permits within the prescribed timeframes

Designers

- Should include full details of all building elements on the plans to demonstrate compliance with the requirements of the Act, the Regulations and the BCA, or include a note on the plans that refers to supporting documentation

VBA actions

The VBA

- Conduct a targeted risk-based audit of registered building surveyors
- Work with industry groups and training organisations to influence performance improvements of industry in areas of systemic non-compliance
- Develop and socialise practitioner (building surveyor) code of conduct
- Use audit data to inform the Sunsetting of the *Building Regulations*, particularly regulatory changes relating to record keeping requirements for RBSs, including evidence of consideration
- Improve existing guidance material and develop additional resources for practitioners and owners
- Follow-up on reports issued to audited RBSs and, where required compliance activity has not been implemented, undertake appropriate enforcement action

Detailed findings

1. Building permit form (Form 2)

| Observed issues | Implications and risks |
|--|--|
| <p>323 building permit forms audited were compliant (34%).</p> <p>Non-compliant forms: prescribed fields not included or information omitted</p> <ul style="list-style-type: none"> • Address for serving or giving documents missing (234 permits) • Reporting authorities not nominated or details missing (105 permits) • Practitioners involved in the building work not listed or registration numbers omitted (31 permits) • Mandatory inspection requirements not included (22 permits) <p>Errors on forms</p> <ul style="list-style-type: none"> • Classification of buildings incorrect (eg. garages not classified separately) (171 permits) • Cost of work declared deemed inconsistent with extent of work on drawings (99 permits) – also linked to inconsistency between scope of building work on the building permit form and extent of work on drawings • No condition for the framing details and truss design to be submitted prior to erection (45 permits) • Completion date not specified within six months of the start of construction of a swimming pool (8 permits - 13% of permits for swimming pools) • Permit number not as per Minister’s Guideline (38 permits) • Section 10 or Regulation 608 statements listed under the heading Alternative Solution (7 permits) | <ul style="list-style-type: none"> • <i>Relating to the address for serving documents:</i> the RBS may not be able to promptly serve a building notice (under sections 106 and 107 of the Act) if they do not have the full details of the owner on whom to serve the notice or order on hand. • There is no assurance that the RBS considered particular matters, specifically: <ul style="list-style-type: none"> - The <i>classification of building</i> has an impact on the applicable legislative requirements - If the <i>registration numbers</i> of practitioners involved are not included, question as to whether they are qualified to do the work • An erroneous <i>cost of work</i> can have implications in terms of insurance, ability of an owner builder to carry out the work, and levy payable to the VBA • Information on the building permit form is used to generate occupancy permits so errors are carried through |

2. Property information

| Observed issues | Implications and risks |
|---|--|
| <p>Termite prone area, flood prone land, bushfire prone area etc.</p> <p>Of the 631 relevant permit files, 355 did not reference this information (56%)</p> <p><i>It is acknowledged that the RBS is not required by legislation to record items that are not applicable to the specific building permit, but it is considered good practice to include evidence demonstrating that consideration was given to matters that could impact the building permit.</i></p> <p>Site plan</p> <p>The site plan was omitted or missing information in 23% of building permit files at council (<i>refer section on drawings – page 17</i>)</p> <p>Information on the site</p> <p>Information omitted or lacking details including:</p> <ul style="list-style-type: none"> - copy of title, subdivision plan (102 permits) - soil classification / site specific geotechnical report (111 permits) - whether sewage is available or if a septic tank permit is required (35 permits) - Bushfire Attack Level (BAL) assessment (175 permits) | <ul style="list-style-type: none"> • The RBS cannot provide assurance that they undertook their legislated responsibility in that: <ul style="list-style-type: none"> - the appropriate checks were performed by the owner/owner’s agent - the building work complies with legislative requirements specific to the conditions of the site (additional/different requirements in bushfire prone areas for example) - the RBS had all necessary information to consider and appropriately determine matters including the need for protection work, protection of the public, proper fire separation, site cut or fill, adequate falls for the drainage of the allotment, site coverage, suitability of footings design |

3. Proposed building work information

| Observed issues | Implications and risks |
|---|--|
| <p>Information on specifications, methodology, engineer computations and energy report missing / with errors</p> <p><i>For more detail, refer to the various chapters under the drawings section – page 17 and onwards.</i></p> | <ul style="list-style-type: none"> • The RBS cannot provide assurance that the building work will comply with the legislative framework based solely on the plans and accompanying documentation potentially leading to health and safety issues |

4. Planning information

| Observed issues | Implications and risks |
|---|---|
| <p>Lack of evidence of consideration</p> <p>A determination could not be made as to whether there were planning controls in existence or if Part 4 of the Regulations applied for (126 permits).</p> <p><i>It is acknowledged that legislation requires the RBS to submit evidence of planning considerations when they have an effect on the building permit, but does not require the RBS to include evidence that they performed the necessary checks when the matters assessed are not applicable to the proposed building work. It is however good practice for the RBS to include a note demonstrating consideration.</i></p> <p>Lack of documentation</p> <p>Of permit files where a planning permit was noted on the building permit form (266 cases), the copy of the planning permit and/or endorsed planning drawings were missing 55% of the time (145 permits)</p> | <ul style="list-style-type: none"> • The RBS cannot provide assurance that they considered the possible existence of planning controls • Without evidence of the planning controls in existence: <ul style="list-style-type: none"> - There is no clear indication of when planning controls may override Part 4 of the Regulations, as per section 11(1)(b)(ii) - There is no assurance that the building permit drawings are consistent with the town planning requirements |

5. Reports and consents

| Observed issues | Implications and risks |
|--|---|
| <p>Unable to determine</p> <p>When information on the property and plans are not in the file or lacking details, the need or otherwise for reports or consents cannot be established for building permit files at council.</p> <p>Lack of documentation</p> <ul style="list-style-type: none"> • Lack of evidence that a report or consent from council was obtained as per section 29A of the Act in 42 permit files. This represents 22% of permits relating to demolition and 11% of permits relating to additions. • Lack of evidence of reports and consents also on matters of fire safety, siting, legal point of discharge, septic tank, owner-builder consent | <ul style="list-style-type: none"> • The RBS cannot provide assurance that they consulted with and obtained approval of the relevant reporting authorities • The RBS cannot ensure that the assets and infrastructure of authorities, the operational requirements of emergency services and the amenity of the community are not compromised or adversely affected as a result of proposed building work |

6. Energy efficiency

| Observed issues | Implications and risks |
|--|---|
| <p>Of permit files for which an energy rating was applicable (646 files), 217 (34%) had the necessary documentation relating to energy efficiency. Deficiencies included:</p> <ul style="list-style-type: none"> No evidence that energy efficiency was considered Lack of documentation to justify compliance (eg. through lighting calculator) Lack of details of building elements to confirm compliance (eg. electrical and mechanical services) Acceptance of a lower rating (5/5.5 star) with no reference to section 10 determination | <ul style="list-style-type: none"> The RBS cannot provide assurance that the proposed building work complies with legislative requirements relating to energy efficiency, leading to possible consumer detriment in terms of economic, environmental and general livability |

7. Completion

| Observed issues | Implications and risks |
|---|---|
| <p>Unable to determine</p> <ul style="list-style-type: none"> 193 permit files at council (20% of non-staged permits) lacked evidence of commencement or completion of building work. <p><i>Note: this can be in part explained by the fact that some permits were still current at the time of the audit.</i></p> <ul style="list-style-type: none"> However, in 32 cases the commencement date had lapsed with no evidence of completion of the building work, amendment of the permit or abandonment. <p>Occupancy Permit/Certificate of Final Inspection</p> <p>14% of occupancy permits/certificates of final inspection did not comply. Most frequent deficiencies included:</p> <ul style="list-style-type: none"> Alternative solution not referenced Classification of the building incorrect Allowable live load not mentioned Essential safety measures not listed or generic list used without clear indication on what is relevant <p>Certificates of compliance or completion</p> <p>Out of those permits with evidence of completion, 171 files were missing relevant certificates of compliance or completion.</p> <p>Update of the permit file at council</p> <p>The RBSs contacted during phase two of the audit also indicated that they do not systematically submit additional documentation or revised plans to the relevant council, therefore further compromising the reliability of information at council.</p> | <ul style="list-style-type: none"> <i>Lapsed permits</i> may have implications in terms of liability and insurance for both the consumer and the builder Owners are exposed to damage to property and possible injury if <i>essential safety measures</i>, maximum permissible live load and maximum number of people to be accommodated are not complete and accurate |

8. Timeframes

| Observed issues | Implications and risks |
|--|--|
| <p>Section 80</p> <p><i>It is acknowledged that compliance with section 80 requirements is difficult to establish as the RBS is not required to submit proof of date of appointment with the notice of appointment (the date on the application form is not necessarily the date of the appointment).</i></p> <p>Beyond this issue, deficiencies observed included:</p> <ul style="list-style-type: none"> • No evidence of section 80 notice (82 permits) • Date of section 80 notice equal to (possible but improbable) or later than the date of the building permit (15 permits) <p>Section 30</p> <p>Shortcomings included:</p> <ul style="list-style-type: none"> • No evidence of building permit or associated documentation being submitted to council (9 permits) • Significant delay in submitting section 30 documentation to councils (15 permits where documentation was received at least three weeks after the date of issue of building permit) | <ul style="list-style-type: none"> • Without <i>notifications of appointment</i>, there is a possibility that more than one building surveyor may be, or may be perceived to be, appointed by an applicant, which may lead to confusion about who is responsible and disputes • No record of the building work proposed to be carried out in file, compromising transparency for future owners and presenting a risk that the MBS may not have all information should an emergency arise |

Detailed compliance actions

Based on the observations made on the compliance of information in the permit files at council reported above, detailed actions for people involved in the building permit process is outlined below.

Owner/owner's agent

The **owner/owner's agent** must:

1. provide the RBS a full set of documentation on the proposed building work, including evidence of the compliance of proposed building methods, designs, products and systems including certificates from approved testing authorities, CodeMark Certificates of Compliance, BRAC accreditation certificates, BPB compliance determination or other evidence of compliance with legislative requirements, as per Practice Note 62
2. provide the RBS with relevant planning information, i.e. planning permit and planning permit drawings
3. ensure all computations and reports supporting any aspect of the design provided are specific to the site and the building work proposed

Relevant Building Surveyor

The RBS must:

1. ensure compliance with the provisions of Regulation 313, in particular:
 - Use prescribed forms that comply with and contain the required information as set out in Schedule 2 of the Regulations
 - Classify buildings as set out in the BCA Part 1.3 or Section A.3
 - Clearly state time limits on the building permit, in accordance with Regulation 315. Permits for swimming pools, spas and/or safety barriers must clearly state that the work must be completed within six months of commencement, as per Regulation 315(1)(b)(i)
 - Obtain the necessary documentation to demonstrate compliance with the requirements of section 176 of the Act relating to practitioners involved, as required by section 24A of the Act
2. send a notice of appointment, dated and signed by the RBS, to the relevant council within 7 days of being appointed, as per section 80 of the Act
3. assess whether the cost of work declared by the applicant is reflective of the scope of work, in line with section 205H(3)(b) of the Act
4. only approve applications where the owner/owner's agent has provided sufficient information in accordance with Regulations 301-305 to demonstrate the building work will comply with the Act, the Regulations, codes and standards
5. if the proposed building work does not meet the deem-to-satisfy requirements of the BCA, an alternative solution must be accurately documented and correct processes followed (*see also actions on alternative solutions page 27*)
6. relating to planning controls, ensure the proposed building work is consistent with planning controls and satisfy the requirements set out in section 11 of the Act
7. in relation to reports and consents where required by the Regulations or section 29A of the Act, the RBS must:
 - Not issue a building permit unless satisfied that any consent of a reporting authority required is obtained as outlined in section 24(1)(i) of the Act
 - Consider the report of a reporting authority before deciding the relevant application for a permit
 - In cases where the RBS approves an application without a report because the reporting authority fails to supply it (Schedule 2, clause 6 of the Act), it is good practice for the RBS to document this decision in the building permit file
8. submit all documents that are received from the owner/owner's agent as part of a building permit application, as well as all copies of supporting documentation including determinations issued by the RBS and all copies of reports and consents, to the relevant council within 7 days of issuing the building permit, as per section 30 of the Act and Regulation 319. As document to be submitted by the applicant with the application form, a copy of the planning permit should be included in the documentation the RBS submits to council as per section 30 of the Act.
9. include all relevant information on certificate of final inspection or the occupancy permit, including all required essential safety measures
10. submit all relevant documentation to Council on completion of the building work, in line with Regulations 1012-1014 and section 73 of the Act.

Relevant Building Surveyor (continued)

The **RBS** should consider it good practice to:

1. where the application does not contain sufficient information, provide written correspondence to the owner/owner's agent to obtain the required information and/or refuse the permit – and retain a copy of the communication in the building permit file. The building permit conditions should not replace the requirement for information to be provided to demonstrate compliance with the Act and Regulations
2. show evidence that they considered planning matters even when they do not apply to the building work
3. monitor and notify owner/owner's agent of the impending lapse of a permit in advance of the permit lapsed date (ideally at least two months in advance)
4. request a written notice of appointment, dated and signed by the owner/owner's agent and keep a copy of it in the building permit file, when the appointment does not occur at the time of the owner/owner's agent submission of the building permit application form
5. keep a record of the section 80 notice sent to council in their file
6. keep a record of all building permit documents, including those endorsed and superseded documents

Councils

Councils must:

1. keep a record of all documents submitted by the RBS in the building permit file, in line with Regulation 324
2. respond within reasonable timeframes to requests for information on the existence of planning controls, so the owner/owner's agent can then seek the relevant documentation

Councils should:

3. date stamp documentation when it is first received

For more information

Act sections 11, 21, 24, 24A, 29A, 30, 45, 47, 73, 74, 80, 176, 205H, 238, Schedule 2

Regulations 112, Part 3, Part 4, Part 8, Part 10, 1503, Schedule 2, Schedule 6

BCA sections A3, J and Parts 1.3, 3.12

Minister's Guidelines 07, 11

Practice Notes 09, 12, 35, 55, 57, 62, 64

2.4 Drawings

Background

Drawings serve as the source of truth throughout the building process and for many years thereafter. They form part of the contractual material between the owner and the builder. Building legislation requires plans to be prepared by a designer (draftsperson/architect/builder) or an owner, and endorsed/approved by a building surveyor.

To gain endorsement, the drawings must be in a manner that if building work was completed based on the plans and accompanying documentation (eg. specifications and structural drawings); it would be compliant with the Act, the Regulations and related legislation such as the *Building Code of Australia* (BCA) and Australian Standards.

Key findings

Observed issues related to drawings included:

- Plans omitted entirely (particularly site plan) or inconsistent with the scope of the building work described on the building permit
- Building elements not clearly nominated on drawings (eg. no handrail, no gutters), lacking details (eg. dimensions) or with errors (eg. spacing not compliant)
- Plans lacking details: construction requirements, specifications

Over 60% of plans were poorly prepared. Incomplete, unclear or erroneous drawings can lead to building work being constructed incorrectly and not meeting legislative requirements. They also weaken the validity of contractual arrangements, and can result in accountability and liability being challenged.

Audits revealed that, to achieve compliance on plans during the endorsement process, some RBSs add information to the drawing in the form of rubber ink stamps or notations that note the appropriate standard. However there is still a reliance on the builder to know the details of the referenced standard, or at times to draw on their knowledge and experience to rectify omissions and errors so the building is constructed in a compliant manner.

Key areas for improvement

This section outlines areas identified for improvement. The VBA encourages practitioners and stakeholders to implement the appropriate systems, processes, tools and techniques to help them deliver actions to improve future compliance in these areas.

RBSs

- Must not approve building permit applications where plans do not demonstrate compliance with legislation
- Must communicate with the owner or owner's agent to seek additional information or amended drawings where necessary

Designers

- Must produce plans that demonstrate the building work will comply with the Act, the Regulations and the BCA
- Should immediately improve practices in areas presenting a high risk to public safety and areas with high occurring non-compliance (using audit data)

VBA Actions

The VBA

- Conduct an audit of registered designers (draftsperson and builder)
- Use audit data to inform the Sunsetting of the Regulations, particularly regulatory changes relating to detail required on plans
- Use this and future audit data to deliver improvements to the assessment and registration process for designers
- Improve existing guidance material and develop additional resources for practitioners
- Follow-up on reports issued to audited RBS and where required compliance activity has not been implemented, undertake appropriate enforcement action

Detailed findings

1. Site plan

| Observed issues | Implications and risks |
|--|---|
| <p>No site plan</p> <ul style="list-style-type: none"> No site plan was found in 27 building permit files at council <p>Missing information</p> <ul style="list-style-type: none"> Site plans were missing information in 159 permit files, such as site levels, finished floor levels of the proposed building, north point, legal point of discharge for storm water Site plans/subdivision plans lacking details on the location and depth of services in easements in 39 permit files | <ul style="list-style-type: none"> Without a site plan containing the appropriate details, the RBS is unable to consider and appropriately determine matters including the need for protection work, protection of the public, proper fire separation, site cut or fill, adequate falls for the drainage of the allotment and site coverage. The RBS therefore cannot provide assurance that the building will be constructed in line with the legislative requirements |

2. Scope of building work

| Observed issues | Implications and risks |
|---|---|
| <ul style="list-style-type: none"> Existing building(s) or parts of building(s) for alterations and additions were not clearly differentiated from the proposed building work on the plans Plans did not clearly distinguish work to be performed as part of separate stages. | <ul style="list-style-type: none"> Possible discrepancies between the <i>scope of work</i> described on the building permit form and the extent of building work appearing on drawings. As both the building permit form and drawings are part of the contractual agreement between the owner and the builder, accountability and liability can be challenged if builders misread the work to be performed, making dispute resolution more difficult and more costly |

3. Safe movement and access, construction of exits

| Observed issues | Implications and risks |
|--|--|
| <p>Stair construction</p> <p>Permit files at council were found to be 74% compliant. Non-compliance was observed in 161 permit files. There was a larger proportion of non-compliance for building classes 2-9 (33% of non-compliant files were for commercial buildings). Non-compliance related to:</p> <ul style="list-style-type: none"> Building elements not clearly nominated on drawings, eg. no handrail or balustrade, no step or landing where there should be one Stair construction not detailed enough, eg. no sectional details, dimensions missing, construction details not included | <ul style="list-style-type: none"> Without clear nomination of all building elements, including full dimensions and details, the RBS cannot provide assurance that all aspects of building work will comply with the legislative framework. This can lead to safety being compromised, for example in case of fire |

3. Safe movement and access, construction of exits (continued)

| Observed issues | Implications and risks |
|--|---|
| <p>Construction of exits (commercial buildings only)</p> <p>Compliance for construction of exits (78%) was higher than other drawing details, however it is noted that non-compliance presents a high risk to health and safety, specifically:</p> <ul style="list-style-type: none"> • Lack of dimensions to determine compliance on travel distances and distance between alternative exits (45 permits) • Lack of information on exit doors: not clearly indicated on plans (question as to which direction they open) and no details on the area they open onto <p>Access to buildings for persons with disabilities</p> <p>Permit files at council were found to be 47% compliant for disability access. Key issues included:</p> <ul style="list-style-type: none"> • Lack of information on plans to be able to determine compliance: no site levels, finished floor levels, no reference to car parking • Lack of details: dimensions (door and corridor widths), gradients, reduced levels, kerbs, ramps, handrails, latch side clearance, circulation zones, door threshold changes • Issues relating to disabled access observed with no evidence of dispensations or modifications or exemption statement on file | <ul style="list-style-type: none"> • People with a disability may not be able to access the building or use the facilities, resulting in a breach of the <i>Disability Discrimination Act 1992</i> |

4. Swimming pools

| Observed issues | Implications and risks |
|--|---|
| <p>Safety barrier on plans</p> <p>Details of safety barrier were missing in 25 out of 53 building permit files relating to swimming pools, i.e. 47% (type, location, methodology of construction, materials)</p> <p>Impact of alterations and additions</p> <p>Lack of evidence in the file that the RBS considered the implications of proposed alterations or additions on existing pool safety barriers in 6 permits.</p> <p>Energy efficiency</p> <p>Lack of details to confirm compliance of the proposed pool heater with the energy efficiency requirements detailed in the BCA (<i>refer energy efficiency section – page 12</i>)</p> | <ul style="list-style-type: none"> • Reliance on the builder to know the performance requirements that need to be achieved • Reliance on the building inspector to pick up non-complying safety barriers after they have been installed/constructed |

5. Fire safety

| Observed issues | Implications and risks |
|--|---|
| <p>Fire construction requirements</p> <p>Lack of details and information on drawings to determine compliance on:</p> <ul style="list-style-type: none"> • fire separation / fire resistance provisions in 87 building permit files (12% of domestic permits) • fire resistance provisions in 167 files (64% of commercial permits) • compartmentation and protection of openings in 85 files (33% of commercial permits) • construction in a bushfire prone area. A large number of files did not include a Bushfire Attack Level (BAL) assessment (refer section on property information – page 10). Without a BAL rating, the requirements could not be determined <p>Services and equipment</p> <p>Reliance on conditions on building permit forms to achieve compliance with the provisions of the BCA rather than requiring relevant details included in drawings.</p> <p>Details were missing on drawings of existing or proposed fire services and emergency equipment to confirm compliance nominated in 147 building permit files for commercial permits (out of 260, i.e. 56%) particularly:</p> <ul style="list-style-type: none"> - Type and location of portable fire extinguishers - Location and details of fire hydrants and fire hose reels to confirm coverage is achievable - Smoke hazard management/alarm details not nominated - No specifications of luminaire and fixture/fitting details and/or location not shown for emergency lighting, exit signs and warning systems <p>Location of smoke alarm not documented on drawings or not positioned in accordance with the provisions of the BCA in 158 building permit files for domestic permits (out of 741, i.e. 21%)</p> | <ul style="list-style-type: none"> • The RBS cannot provide assurance that the building work will comply with the legislative framework based solely on the drawings and accompanying documentation potentially leading to safety issues, particularly the safety of occupants in case of fire and the spread of fire within a building and between buildings • Buildings may be a risk to occupants in a fire situation |

6. Cladding and masonry (domestic only)

| Observed issues | Implications and risks |
|--|---|
| <p>Compliance relating to roof and external cladding was 89% and relating to masonry, 81%. Key issues identified were as follows:</p> <ul style="list-style-type: none"> • Not clearly nominated on drawings, eg. no gutters, downpipes, drains, weep holes on plans • Not detailed enough, eg. roof pitch not nominated, no details on the materials, and, in the case of gutters and downpipes, no evidence of connection into existing stormwater collection and discharge system • Errors, eg. joints and downpipes not located or spaced appropriately • Lack of supporting documentation to demonstrate compliance of external and roof cladding eg. test reports, accreditation, specifications, construction methodologies. <i>This is linked to the lack of documentation observed on alternative solutions.</i> • Where the building was located in a bushfire prone area or a bushfire management overlay, there was a lack of evidence that the materials used and construction methods complied with the AS 3959 relevant to the Bushfire Attack Level (BAL) of the site. Note also the lack of BAL assessment on file previously mentioned and lack of section 10 declarations. | <ul style="list-style-type: none"> • Though non-compliance can be identified during inspections, rectifications would be difficult and costly • Reliance on the builder and relevant tradespeople to know and implement the requirements of the relevant standard • The RBS cannot provide assurance that <i>materials</i> used or <i>methods of construction</i> will comply and therefore will perform as required over the life of the building • <i>Bushfire requirements</i> may not be incorporated in the construction of the building, resulting in an unsafe building |

7. Glazing in critical areas and waterproofing

| Observed issues | Implications and risks |
|---|--|
| <p>Glazing in critical areas was 38% compliant and waterproofing, 47% compliant. Issues related to:</p> <ul style="list-style-type: none"> • Australian Standards not nominated on plans • Wrong Australian Standard nominated, eg. AS 1288-1994 superseded by more recent AS 1288-2006 • General notes only on drawings: no details on the materials, specifications, construction methodologies (on plans or in accompanying documentation), or, in the case of stormwater drainage, connection into the existing system | <ul style="list-style-type: none"> • Reliance on the builder and relevant tradespeople to know and implement the requirements of the relevant standard • The RBS cannot provide assurance that <i>materials</i> used or <i>methods of construction</i> will comply, therefore presenting a risk to the health and safety of the public |

8. Framing

| Observed issues | Implications and risks |
|---|---|
| <p>Of 597 permits with a framing component, 394 were compliant (66%). Typically, observations included a lack of specific details on drawings and supporting documentation, such as:</p> <ul style="list-style-type: none"> - Framing members (stress, grade, type spacing) - Bracing layouts - Tie-down details - Lintel details - Nomination of wind speed <p>Specific to timber framing:</p> <ul style="list-style-type: none"> - New or existing sub-floor ventilation details - Clearances (sub floor, underside of bearer) | <ul style="list-style-type: none"> • Reliance on the builder and relevant trades people to know and implement the requirements of the legislation • Possibility of requirements not being incorporated in the construction of the building, particularly elements not visible at mandatory inspection stages |

9. Footings

| Observed issues | Implications and risks |
|---|--|
| <p>Lack of information on file to be able to determine compliance. In particular:</p> <ul style="list-style-type: none"> • No soil / geotechnical report (<i>refer section on building permit files at council offices – page 9</i>) • No engineering report or analysis to establish adequacy of existing structural elements • Site plan missing or not displaying levels, depth and location of services and offset details (<i>refer Site plans – page 17 and Property information, lack of title plan and subdivision plan – page 10</i>) <p>No structural drawings or computations (73 permits)</p> <p>Lack of details</p> <ul style="list-style-type: none"> • Connection to existing slab: not detailed or not endorsed by an engineer • General notes only in relation to site and surface drainage • No details on footings: depth, fixing details • Design not as per deem-to-satisfy provision and no alternative solution documented • No angle of repose details indicated associated with services in easement; engineer designs do not appear to have considered the easements | <ul style="list-style-type: none"> • Without a <i>geotechnical report</i> and a <i>site plan</i> on file showing relevant information, including easements, there is no evidence that the RBS had all the necessary information to ensure that the footing design was appropriate for the site. If it is not, this could lead to the possible failure of the entire building • Without <i>structural drawings, computations and detailed architectural drawings</i>, there is no evidence that the RBS could ensure that the design was appropriate and that the builder would construct it in compliance with legislative requirements |

Detailed compliance actions

Based on the observations made regarding the compliance of drawings reported above, detailed actions for various stakeholders are outlined below.

Owner/owner's agent

The **owner/owner's agent** must:

1. provide the RBS a full set of drawings and computations, with the appropriate level of details, for the proposed building work

Relevant Building Surveyor

The **RBS** must:

1. only approve applications where the owner/owner's agent has provided sufficient information in accordance with Regulations 301-305 to demonstrate the building work will comply with the Act, the Regulations, codes and standards. Relating to the findings in this audit, particular attention is drawn on:
 - the fact that the proposed building work must meet the deem-to-satisfy requirements of Part 3 the BCA, or section C, D, E and F1 of the BCA, or show compliance with the relevant performance requirements (use of an alternative solution, see actions page 27)
 - a building permit application for a pool must include details of the safety barrier as part of the proposed work
 - the application must include a site plan and a soil/geotechnical report where relevant
2. in relation to swimming pools or spas, issue the building permit for the barrier and pool/spa as one permit and not as a staged building permit
3. where roof/truss designs and computations and/or bracing details are not available at the time of issue of the building permit, the RBS must add a condition on the building permit form. This condition should state that details be provided prior to erection of the frame to demonstrate that the building work meets the requirements of Part 3.4 of the BCA.
4. be mindful that a condition on the permit or general note of the Standard to comply with, though necessary, is insufficient – there should be detailed notes on the plans or a reference calling to more detailed documentation on the plans
5. ensure that endorsed plans accurately reflect the scope of work described on the building permit form, in line with Regulations 303 and 304:
 - Plans must clearly differentiate existing building and structures from proposed building work
 - Existing building elements demolished or partially dismantled for the purpose of alterations and additions must also be documented and described in the application documents
6. for alterations (eg. fit outs) of a building, the RBS must consider aspects broader than the immediate proposed building work area, that is consider the existing building, in particular for matters relating to safety such as fire safety and access and egress
7. obtain the relevant certificates of compliance as per section 238 of the Act and Regulation 1505
8. where the application does not contain sufficient information, provide written correspondence to the owner/owner's agent to obtain the required information and/or refuse the permit – and retain a copy of the communication in the building permit file
9. submit all documents that are received from the owner/owner's agent as part of a building permit application to the relevant council, as per section 30 of the Act
10. submit documents received after the issue of the building permit to council as required by sections 30 and 73 of the Act.

Designer

The **designer** must:

1. provide drawings in accordance with Regulations 302 - 305. In particular:
 - drawings must be in accordance with Regulation 302(1)(a)
 - the site plan must provide all matters set out in Regulation 302(2) and Regulation 304(1) and provide details of the immediate surroundings of the proposed building work
2. clearly differentiate existing building and structures from proposed building work and/or staged work as per Regulation 303, by for example:
 - using colours for the new work
 - shading or cross hatching
 - providing clouds or other drafting methods for highlighting new work
3. consider the possible impact of a proposed building or structure on existing safety barriers to pools and spas
4. provide computations prepared by a registered engineer and where relevant certificates of compliance in line with section 238 of the Act and Regulation 1505

The **designer** should:

5. include full details of all building elements on the plans to demonstrate compliance with the requirements of the BCA, including:
 - note the relevant Australian Standard that must be complied with where applicable
 - detail specifications or include a note on the drawings that refers to supporting documentation

Councils

Councils must:

1. keep a record of all documents submitted by the RBS in the building permit file, in line with Regulation 324

For more information

Act sections 15A, 24, 30, 238, 160B

Regulations 116, 301-305, 319, 324, 701-705, 1505, Schedule 2 Form 2

BCA Parts 1,2 and 3; Sections C, D, E and F1

Practice Notes 05, 07, 13, 14, 27, 31, 37, 38, 40, 46, 62

2.5 Alternative solutions

Background

An alternative solution is a design solution and/or construction approach that does not meet the prescriptive deem-to-satisfy provisions but complies with defined performance requirements of the BCA. An alternative solution is a feature of the building system that acknowledges 'one size fits all' is not always the best solution, nor always an owner's preference.

Key findings

Audit findings relating to alternative solutions included:

- Lack of documentation of the alternative solution: methodology, test reports, specifications of materials used, performance requirement it is meant to satisfy, written determination by the RBS
- Alternative solutions not prepared and determined by independent persons
- No evidence of appropriate qualification of persons providing a certificate under section 238 of the Act relating to compliance of the alternative solution with a fire performance requirement

Relating to alternative solutions, 57 building permit files were examined during phase two of the audit (RBS's files). Of those, an alternative solution was mentioned on the building permit but no alternative solution was applicable in 9 cases, 16 permit files were compliant and 32 (56%) were non-compliant, mainly due to missing or inadequate documentation. This demonstrates that the issues around alternative solutions are not restricted to council files and problems with section 30 non-compliance.

Key areas for improvement

This section outlines areas identified for improvement. The VBA encourages practitioners and stakeholders to implement the appropriate systems, processes, tools and techniques to help them deliver actions to improve future compliance in these areas.

RBS

- Check proposed alternative solutions and their assessment methods to adequate levels to ensure compliance with relevant performance requirements
- Check that the person preparing the alternative solution is independent of them or their office and has the appropriate qualifications
- Issue a written determination on the proposed alternative solution with justification of how the alternative solution meets the performance requirements of the BCA
- Submit to council all documentation provided by the applicant and the RBS determination

Designers and practitioners involved in alternative solutions

- Must undertake alternative solutions only if they have the appropriate qualifications and are independent of the RBS
- Must ensure that the alternative solutions are prepared, assessed and/or certified in compliance with legislative requirements (use VBA guidance material & industry training)
- Should update processes to incorporate a declaration of involvement in the design, assessment and/or certification of the alternative solution (and statement of relevant qualification and/or registration number) when supplying documentation to the RBS

VBA Actions

The VBA

- Conduct an audit of registered practitioners involved in the design, assessment, certification and determination of alternative solutions
- Use audit data to inform the Sunsetting of the Regulations, particularly regulatory changes relating to alternative solutions
- Deliver improvements to registration processes relating to alternative solution
- Improve existing guidance material and develop additional resources for practitioners
- Refer non-compliance relating to alternative solutions for enforcement
- Follow-up on reports issued to audited RBSs and, where required compliance activity has not been implemented, undertake appropriate enforcement action

Detailed findings

1. Documentation

| Observed issues | Implications and risks |
|---|--|
| <p>Unable to determine compliance</p> <p>Compliance relating to alternative solutions could not be determined for 12 permits (11% of relevant sample) because the building permit file was extremely lacking (eg. no plans, no copy of the building permit form)</p> <p>No documentation</p> <p>An alternative solution was mentioned on the building permit form without the file containing documentation at all relating to the alternative solution in 29 cases (over a quarter of the relevant permit files)</p> <p>Partial documentation</p> <p>30% of the relevant audited files at council had one or more of the following missing:</p> <ul style="list-style-type: none"> - Methodology - Test reports - Specifications of materials used - Performance requirement it is meant to satisfy - Determination by the RBS | <ul style="list-style-type: none"> • The RBS cannot provide evidence that they undertook their legislated responsibility to provide assurance that: <ul style="list-style-type: none"> - The alternative solution was prepared appropriately and is suitable - The building has potential to not comply with the safety requirements detailed in the legislation - Materials used or methods of construction will comply and therefore will perform as required over the life of the building • Liability between the alternative solution designer and RBS may be challenged |

2. Nomination of alternative solution on the building permit

| Observed issues | Implications and risks |
|--|---|
| <p>Building permit form</p> <ul style="list-style-type: none"> • The alternative solution section of the building permit form (Form 2) was not used solely for alternative solutions relating to the building permit; it instead included section 10 statements or Regulation 608/609 determinations. • Alternative solutions were also used without being stated on the building permit form, and without full documentation | <ul style="list-style-type: none"> • Erroneous records contribute to lack of transparency and accountability of involved practitioners and have an impact for current and future owners • The RBS and designers of future building work may not be aware that the original building (i.e. after completion of the building work proposed with the current building permit) was designed with an alternative solution, therefore possibly compromising safety and creating damage to buildings |

3. Independence of persons preparing and determining alternative solutions

| Observed issues | Implications and risks |
|--|--|
| <p>The alternative solution was prepared by the RBS or someone in the RBS office in 6 of the audited building permit files</p> | <ul style="list-style-type: none"> Without independence between the individual preparing the alternative solution (who could be the designer) and the RBS who makes a determination on the alternative solution, there is potential for real or perceived conflict of interest |

4. Qualification of persons involved in fire safety related alternative solutions

| Observed issues | Implications and risks |
|---|--|
| <p>Qualifications</p> <p>Lack of evidence in the files relating to the qualification of individuals issuing section 238 certificates for fire safety related alternative solutions</p> <p>Fire safety related alternative solutions determined by an individual without the appropriate qualification to do so</p> | <ul style="list-style-type: none"> The individual issuing a certificate for a fire safety related alternative solution is not determined to be suitably qualified and therefore the solution may not be appropriate The building may present a health and safety risk during construction or after completion Without the RBS collecting and recording information regarding qualifications and registration of the individuals issuing certificates under s238 for fire safety related alternative solutions, there is little visibility and assurance that the legislation has been adhered to |

For more information

Act sections 30, 79, 238, 160, 160B

Regulations 113, 113A, 319(1)(h), 1507, Schedule 2 Form 2, Schedule 7

BCA Parts 1.0.8, 1.0.9, 1.0.10; Sections A0.8, A0.9, A0.10

Practice Note 63

Detailed compliance actions

Based on the observations made regarding the compliance of alternative solutions reported above, detailed actions for various stakeholders are outlined below.

Relevant Building Surveyor

The **RBS** must:

1. follow the correct procedures and document accurately when assessing and determining an alternative solution for a building permit application. The RBS should implement the requirements as set out in the VBA Practice Note 63.
2. record all material required to make a determination, including possible assessments and certifications by third parties, as well as their written determination, in the building permit file they retain and in the documentation submitted to council in line with Regulation 319(1)(h)
3. declare all alternative solutions on the building permit form under the appropriate heading, as per prescribed Form 2 in Schedule 2 of the Regulations
4. not be involved in the design of the building or building work, nor have any relationship (current or within the prescribed period) with the person or body which designed the building or building work other than an appointment to issue the building permit, carry out inspections and issue occupancy permits and temporary approvals, as per section 79 of the Act
5. hold appropriate qualification to make a determination on an alternative solution relating to a fire performance requirement, as per Regulation 113(a)
6. where the RBS relies on a certificate under section 238 of the Act to make a determination on an alternative solution relating to a fire performance requirement of the BCA, the RBS must make certain that the person who issued that certificate holds a current practitioner registration in the appropriate category or class of practitioners. If the RBS relies on a certificate issued by an independent registered building surveyor (Regulation 113(c)), the RBS should ensure that they have the relevant expertise. The RBS should record documentation on the building permit file.

The **RBS** should:

7. where the RBS determined that an alternative solution complies with a fire safety performance requirement of the BCA, the RBS should include a statement in the building permit file confirming that they are appropriately qualified to make this determination under regulation 113(a), for example by noting relevant qualifications on their determination

Persons involved in alternative solutions

The **individual preparing the alternative solution** should:

1. consider including a statement declaring that they are independent from the RBS
2. state their qualifications/category of registration for alternative solutions relating to fire safety, structural and/or access performance requirements

The **individual issuing a certificate for an alternative solution** should:

3. state their practitioner registration number on the certificate
4. state their added qualification or expertise on the certificate where relevant

2.6 RBS considerations and determinations

Background

One of the fundamental parts of the RBS's role is to use their discretionary power to make decisions that influence the scope of work that is proposed. RBSs draw on their technical expertise to provide assurance to the owner, other practitioners and the community, that the building work will be carried out in a manner that is not only compliant but also safe.

While the RBS must consider protection work and protection of the public, they are only required to keep a record of actions and determinations.

Key findings

Observed issues related to RBS considerations and determinations included:

- lack of information in the file providing no assurance that the RBS could make an informed decision
- lack of evidence of consideration of protection work, protection of the public and partial compliance under Regulations 608, 609 and 1011, where it appeared required
- lack of evidence of determination by the RBS

Key areas for improvement

This section outlines areas identified for improvement. The VBA encourages practitioners and stakeholders to implement the appropriate systems, processes, tools and techniques to help them deliver actions to improve future compliance in these areas.

RBS

- Must not approve building permit applications where documentation provided by the owner/owner's agent is not sufficient to demonstrate compliance with legislation
- Must obtain the relevant notices and certificates
- Must issue a written determination on the matters considered
- Must submit all documentation received from the owner/owner's agent as part of the building permit application as well as any relevant supporting documentation such as notices, certificates and determinations

Designers

- Must provide a full set of drawings, including site plan with the appropriate details and all other required documentation
- Must include details of the protection work and protection of the public measures on the plans

VBA Actions

The VBA

- Conduct a targeted audit of registered building surveyors on work relating to RBS determinations
- Use audit data to inform the sunset of the Regulations, particularly regulatory changes relating to record keeping requirements for RBSs, including evidence of consideration
- Improve existing guidance material and develop additional resources for practitioners and owners
- Follow-up on reports issued to audited RBSs and, where required compliance activity has not been implemented, undertake appropriate enforcement action

Detailed findings

1. Partial Compliance (alterations, additions and change of use)

| Observed issues | Implications and risks |
|---|---|
| <p>Of the 183 permits that appear to have required a determination, 39 files were compliant. Other permit files lacked reference to consideration or evidence of determination.</p> <p>Of particular concern was compliance on fire safety matters, which could only be determined in 50% of class 1&10 permits and 25% of class 2-9 permits relating to alterations and additions, as there was no details of existing or proposed services in the existing building.</p> | <ul style="list-style-type: none"> • There is no assurance that the RBS considered the need to bring the existing building into conformity, particularly the need to bring the existing building to acceptable levels of safety • It is questionable that the RBS had access to the information to determine partial compliance |

2. Protection work and protection of the public

| Observed issues | Implications and risks |
|--|--|
| <p>No evidence of consideration</p> <p><i>While the RBS must consider protection work and protection of the public, they are only required to keep a record of actions and determinations. This means that if the RBS did not determine that protection work or protection of the public was required, they are not obliged by legislation to document their decision—however it is considered good practice for them to do so.</i></p> <ul style="list-style-type: none"> • Site plans were omitted or missing details in 23% files at council, and all documentation relating to the permit missing in another dozen files, making informed decision on the need or otherwise for protection difficult. • In another 79 permit files, there was either too much information missing to be able to determine compliance or no evidence of consideration of protection work or protection of the public when it appeared to be required based on the information in the file. <p>Non-compliance on forms, documentation and drawings</p> <p>Where the RBS determined that protection work or protection of the public was required, audits found a lack of details in the accompanying documentation, on the prescribed forms and/or on the drawings in 103 permit files:</p> <ul style="list-style-type: none"> • Documentation lacked details on the nature, method and duration of protection work and/or protection of the public • Protection work and/or protection of the public not shown on the approved plans • Form 3 and Form 4 not in the file at council, lacking details or no evidence that due processes were followed <p>This represents 52% of files where protection work was determined to be required (32 out of 61 files) and 48% of files where protection of the public was determined to be required (73 out of 156 files)</p> | <ul style="list-style-type: none"> • There is no assurance that the RBS considered the need for protection work and/or protection of the public to be provided prior to and/or during the carrying out building work • There is no assurance that the public will be free from injury and adjoining properties free from damage as a result of the building work |

Detailed compliance actions

Based on the observations made regarding the compliance of RBS considerations and determinations reported above, detailed actions for various stakeholders are outlined below.

Owner/owner's agent

The **owner/owner's agent** must:

1. use forms that include the prescribed information (as per Form 3 and 4 of Schedule 2 of the Regulations)
2. ensure Form 3 is filled correctly
3. serve the form in the appropriate manner as per section 84 of the Act
4. provide the RBS sufficient information to enable them to make informed decisions

Relevant Building Surveyor

The **RBS** must:

1. only approve applications where the applicant has provided sufficient information for the RBS to:
 - assess the existing building and all alterations performed in the prescribed period and make an informed decision on the need or otherwise to bring the entire building into conformity with the Regulations
 - make an informed decision on the need for protection work and/or protection of the public
2. where the application does not contain sufficient information, provide written correspondence to the owner/owner's agent to obtain the required information and/or refuse the permit – and retain a copy of the communication in the building permit file
3. where the RBS consents to partial compliance (Regulations 608, 609 and 1011), the RBS must issue a written determination, record it in the building permit file, and submit a copy of that consent to council in line with Regulation 319(1)(m) to (o)
4. where the RBS determines that protection work or protection of the public is needed, the RBS must:
 - ensure that all relevant information and detail of the proposed protection is provided
 - obtain notices from the owner/owner's agent as per sections 84 and 85 of the Act
 - only approve applications where the proposed protection work provides the level of protection and safety required by the Act
 - obtain the certificates issued under Regulation 603 before the work commences where applicable. The certificates must address every aspect of the building work that may give rise to the requirement for protection work
 - issue a written determination on the proposed protection work/protection of the public and keep a record in the permit file. This determination should be submitted to council with the building permit file.
5. ensure all documents that are submitted as part of a building permit application are given to the relevant Council as per section 30 of the Act and Regulation 319

The **RBS** should consider it good practice to:

6. keep evidence that the matter of protection was considered and document the decision even when the RBS determined that protection work/protection of the public was not required. This may help the RBS in case of disputes or problems arising during construction work
7. document determinations under Regulations 608 and 609 with the building permit form. This could be done on a cover sheet accompanying the building permit form or included under a separate heading on the building permit form, but must not be done under the alternative solution section of the building permit form

Designer

The **designer** must:

1. include details of the protection work and protection of the public on the plans

For more information

Act sections 30, 84, 85, Part 7

Regulations 319, 602-604, 607, 608, 609, 1011, Schedule 2 Form 3 and Form 4

Practice Notes 20, 58

3 Appendices

Appendix 1 Permit sample profile

Phase one included 1000 audits performed on building permits at 20 council offices, in both metro and rural Victoria. The sampling was done from data collected through the levy system. Below is a profile of the permits audited.

a. Nature of building work

63 permits were declared for more than one type of work (eg. demolition and new building): 57 permits had two types of work and six building permits had three.

| Type of building work | Number of permits audited |
|-----------------------|---------------------------|
| Addition | 170 |
| Alteration | 220 |
| Change of Use | 14 |
| Demolition | 60 |
| New Building | 596 |
| Re-erection | 7 |
| Removal | 2 |

Table 1: Breakdown of audited permits per nature of work

b. Stage of building work

| Stage of building work | Number of permits audited |
|------------------------|---------------------------|
| Single stage permit | 920 |
| Stage 1 permit* | 42 |
| Stage 2 (or >) permit* | 38 |

Table 2: Breakdown of audited permits per stage of work (*multiple stage building project)

c. Class of buildings

| Class of building work | Number of permits audited |
|------------------------|---------------------------|
| 1a | 557 |
| 1b | 7 |
| 2 | 23 |
| 3 | 13 |
| 4 | 18 |
| 5 | 78 |
| 6 | 72 |
| 7a | 17 |
| 7b | 34 |
| 8 | 28 |
| 9a | 6 |
| 9c | 39 |
| 10a | 2 |
| 10b | 411 |

Table 3: Number of permits audited by building class. Note: all building classes represented so 353 permits feature more than once (see Table 4)

35% of permits audited had more than one class of building.

| Number building class per permit | Number of permits audited | Proportion of permits audited |
|----------------------------------|---------------------------|-------------------------------|
| One | 648 | 65% |
| Two | 319 | 32% |
| Three | 28 | 3% |
| Four | 5 | 0% |

Table 4: Number of building classes per permit

| Number of class per permit | Number of domestic permits audited | Proportion of domestic permits audited | Number of commercial permits audited | Proportion of commercial permits audited |
|----------------------------|------------------------------------|--|--------------------------------------|--|
| One | 459 | 61% | 208 | 80% |
| Two | 279 | 37% | 38 | 15% |
| Three | 15 | 2% | 11 | 4% |
| Four | 0 | 0% | 3 | 1% |

Table 5: Number of classes per permit – shown as domestic (classes 1&10) and commercial (classes 2-9) projects. Note that 13 permits classified as both domestic and commercial hence are double counted in this table.

d. Permits per practitioner, per council

Building permits audited were issued by 212 different registered practitioners. Practitioners had between one and 35 permits. A majority of audited practitioners had one or two permits audited. On average, practitioners had 4.7 permits audited.

| Number permits audited | Number of practitioners | Proportion of practitioners audited |
|------------------------|-------------------------|-------------------------------------|
| 1 | 46 | 22% |
| 2 | 49 | 23% |
| 3 | 30 | 14% |
| 4 | 19 | 9% |
| 5 | 12 | 6% |
| 6 - 10 | 38 | 18% |
| 11 -15 | 7 | 3% |
| 16 and more | 11 | 5% |

Table 6: Number of permits audited per practitioner

More than half of the practitioners audited had permits audited in more than one council.

| Number of councils | Number of practitioners | Proportion of practitioners |
|--------------------|-------------------------|-----------------------------|
| 1 | 89 | 42% |
| 2 | 62 | 29% |
| 3 | 18 | 8% |
| 4 | 17 | 8% |
| 5 | 10 | 5% |
| 6 and over | 16 | 8% |

Table 7: Number of councils in which permits were audited, per practitioner. Reading guide: 62 RBS had a permit audited in two different councils

e. Rural metro

| Location of council | Proportion of permits audited |
|---------------------|-------------------------------|
| Rural | 35% |
| Metro | 65% |

Table 8: Permits as per rural or metro location of municipality in which the building work occurred

Appendix 2 Glossary

| Term | Definition |
|-----------------|---|
| BCA | BCA Volume One and Two in this report means Volume One and Volume Two of the <i>National Construction Code Series</i> . |
| Designer | Draftsperson, Architect, Builder or Owner completing plans |
| MBS | Municipal Building Surveyor |
| NCC | National Construction Code Series Volume One and Volume Two, referred to in this report as the Building Code of Australia (BCA) |
| Owner | Individual(s) or entity that owns the land on which a building is situated or will be situated |
| Owner's agent | Individual(s) or entity that is authorised to act as representative authorised by the owner to act on his/her behalf |
| PBS | Private Building Surveyor |
| RBS | Relevant Building Surveyor |
| The Act | <i>The Building Act 1993</i> |
| The Regulations | <i>The Building Regulations 2006</i> |
| VBA | Victorian Building Authority |