

## Alternative Solutions Procedures and Documentation

Reference to the Building Code of Australia (BCA) in this Practice Note means Volumes One and Two of the National Construction Code Series.

### 1. SUMMARY

This practice note provides guidance on the process of determining a building permit application which proposes an Alternative Solution including:

- the extent of documentation and information required in a building permit application which includes an Alternative Solution;
- the role of the relevant building surveyor (RBS) in determining that a building permit application which includes an Alternative Solution, complies with the Building Act 1993 (Act) and the Building Regulations 2006 (Regulations); and
- the expected legislative process to be adopted where it is apparent that proposed building work will not comply with the Deemed-to-Satisfy (DTS) solution approved in the applicable building permit.

**Note:** Alternative Solution means a building solution which complies with the Performance Requirements other than by satisfying the DTS provisions of the BCA.

### 2. BACKGROUND

It is the role of the RBS to assess and determine if the information contained in a building permit application has adequately demonstrated that the proposed building work will comply with the Act and the Regulations.

The BCA is adopted by and forms part of the Regulations (refer regulation 109). Compliance with the BCA can be achieved by:

- Meeting the DTS provisions; or
- Formulating an Alternate Solution that meets the relevant Performance Requirements or is at least equivalent to the DTS provisions; or
- A combination of the above.

### 3. THE ALTERNATIVE SOLUTION AT THE DESIGN STAGE

Where an Alternative Solution is proposed in a building permit application, adequate documentation and information must be included in the application to clearly demonstrate that the Alternative Solution meets the applicable Performance Requirements.

Regulation 301 requires that the application for building permit must include sufficient information to show that the proposed work will comply with the Act and Regulations.

Regulation 302 goes on to expressly require an application for a building permit to include any

computations and/or reports necessary to demonstrate compliance.

## 4. DOCUMENTATION OF DECISIONS

Decisions made under the BCA should be fully documented and copies of all relevant documentation should be retained.

Examples of kind of documentation which should be prepared and retained include:

- a) Details of the Building Solution including all relevant plans and other supporting documentation.
- b) In cases where an Alternative Solution has been proposed—
  1. details of the relevant Performance Requirements; and
  2. the Assessment Method or methods used to establish compliance with the relevant Performance Requirements; and
  3. details of any Expert Judgement relied upon including the extent to which the judgement
  4. was relied upon and the qualifications and
  5. experience of the expert; and
  6. details of any tests or calculations used to determine compliance with the relevant Performance Requirements; and
  7. details of any Standards or other information which were relied upon

The documentation forming part of the Alternative Solution that is necessary to satisfy the RBS that the pro-posed Alternative Solution will comply with the Act and Regulations; may include plans, specifications, technical reports, computations, Building Appeals Board modifications or determinations, Building Regulations Advisory Committee accreditations, testing authority reports, manufacturer's information, a certificate of compliance and/or a statement of the intended use of the building.

It is not the role of the RBS to make assumptions about a proposed Alternative Solution where the application is lacking in information or to

supplement the application with additional material.

## 5. THE ROLE OF THE RBS IN THE USE OF ALTERNATIVE SOLUTIONS

It is not for the RBS to formulate Alternative Solutions either prior to, during or after the building permit application process. The RBS's role is to assess Alternative Solutions which are submitted to them in a building permit application and to determine whether the proposed Alternative Solution meets the applicable Performance Requirements of the BCA.

Section 79 of the Act requires that a private building surveyor must not accept an appointment to carry out functions in section 76 in relation to the building or building work if the building surveyor:

- prepared the design
- is or within the prescribed period<sup>1</sup> was employed or engaged by the body or person who prepared the design
- has direct or indirect pecuniary interest in the body which prepared the design of the building or building work
- Although Section 79 of the Act applies to private building surveyors<sup>2</sup>, the Local Government Act 1989 has similar provisions. Section 95 of the Local Government Act requires that all council staff must in the course of their employment—
  - act impartially;
  - act with integrity including avoiding real or apparent conflicts of interest;
  - accept accountability for results;
  - provide responsive service.

Therefore, the same expectation is placed on an MBS, to ensure that there is no conflict, meaning an MBS or their delegate who is involved in the design or in a proposed

Alternative Solution must not also act as the RBS.

This does not prevent an RBS from providing helpful advice to an applicant for a building permit.

1. Regulation 1504 prescribes the period for which a building surveyor may not act which is 1 year.
2. The Building Amendment Act 2008 defines that an MBS accepting appointment as an RBS outside of their municipality is then considered a Private Building Surveyor and is subject to the same provisions of the Building Act 1993 as private building surveyor.

In providing any regulatory advice however, they must ensure that they do not become involved in the design process to the extent that they are actively engaged in making design decisions and therefore compromising their independent assessment.

## 6. THE ROLE OF THE RBS IN THE ASSESSMENT OF A PROPOSED ALTERNATIVE SOLUTION

Section 24 of the Act provides that the RBS must not issue a building permit unless they are satisfied that the building work and the building permit will comply with the Act and the Regulations.

The RBS is required to maintain their independence and may ask for as much information as is necessary for them to satisfy themselves that a proposed Alternative Solution complies. Alternatively they may rely upon:

- a certificate issued pursuant to Section 238, which states that the Alternative Solution complies with the Performance Requirement(s); or
- pursuant to Section 160A of the Act which states that the alternate solution complies with that Performance Requirement; or

- a Certificate of Accreditation issued by the Building Regulations Advisory Committee which states that the Alternate Solution complies with that Performance Requirement; or
- a Certificate of Conformity issued by the Australian Building Codes Board which states that the alternate solution complies with that Performance Requirement

The determination of the submitted Alternative Solution by the RBS must be in writing and should include reference to any computations, reports, manufacturer's information, certificates, determinations, etc that were relied upon in determining this compliance.

This requirement is supported in regulation 319(1)(h) which provides that the determination of the RBS that an Alternative Solution complies with a Performance Requirement of the BCA together with any computations or reports relied upon by the RBS in making the determination must be lodged with the relevant council.

## 7. ASSESSMENT METHODS FOR ALTERNATIVE SOLUTIONS

In determining whether the proposed Alternative Solution complies with the applicable Performance Requirements, the RBS must consider the assessment methods set out in part A0.9 of the BCA.

The application for building permit must contain detailed documentation which shows that the proposed Alternative Solution will comply with the applicable Performance Requirements with specific reference to the assessment methods in A0.9. The RBS can review that material to determine whether the applicant has properly applied and demonstrated compliance via those assessment methods.

If the application for a building permit does not contain documentation which applies one or more of the assessment methods set out in Clause A0.9 of Volume One or Clause 1.0.9 of

Volume Two of the BCA the RBS should call for additional documentation.

In checking that the appropriate assessment methods have been used, the RBS can rely on the 'expert judgement' of an expert who has the qualifications, experience and is a Registered Building Practitioner (where relevant) to determine whether the building solution complies with the Performance Requirements. The expert to be relied upon should be an independent third party. There may be times where the RBS will have qualifications and expertise on a particular matter and can rely on that knowledge.

However, the RBS must be cautious about relying solely on their expert judgement to confirm that the appropriate assessment methods have been used when assessing whether a proposed Alternative Solution complies with a Performance Requirement. The assessment methods generally rely on reports or documents from others. The documentary evidence to support that the use of a material, form of construction or design meets a Performance Requirement is set out in Clause A2.2 of Volume One or Clause 1.2.2 of Volume Two of the BCA. If an RBS were to rely only on their own judgment, this may not allow for a sufficient measure of independent assessment and may also expose the RBS to liability if their decision to accept the Alternative Solution is unreasonable.

## 8. ALTERNATIVE SOLUTIONS DURING THE CONSTRUCTION PHASE

### Proposed Works

There are instances where it becomes apparent that proposed building work will not comply

with the DTS solution approved in the applicable building permit. Any variation from the approved plans should be identified prior to building work proceeding.

Once the issue has been identified by the designer or builder, the RBS should require that the applicant apply for an amendment to the building permit. That application for an amendment should include documentation to support the proposed Alternative Solution in the same detail that would have been required had the Alternative Solution been proposed at the time the building permit was applied for. Similarly, the RBS should document their assessment of the proposed Alternative Solution as he or she would have had the assessment been undertaken at the time the application for the building permit was being assessed.

Material submitted by an applicant for an amendment to a building permit and a record of the decision of the RBS in relation to that material must be lodged with the relevant council pursuant to section 30 and 30(1A) of the Act.

It is important to note that the building works related to the matter subject to the permit amendment should not proceed until the amended building permit has been issued.

### Building work under construction

If the departure from the deemed to satisfy provisions has occurred in building work that has been constructed, the RBS must satisfy themselves that the work complies with the Performance Requirements and to do so must require the applicant to document the as built work and produce any necessary documentation, including any Alternative Solutions to show how that work complies with the applicable Performance Requirements in undertaking enforcement of the issue.

Once the issue has been identified, the RBS should employ the normal enforcement processes under Parts 4 and 8 of the Act and Part 9 of the regulations in terms of dealing with building work that has not been constructed in compliance with a building permit or the Regulations. In responding to such situations, an applicant may elect to apply to the RBS to amend a building permit if the work has not yet been fully completed. That application for a permit variation should include documentation to support the proposed Alternative Solution in the same detail that would have been required had the Alternative Solution been proposed at the time the building permit was applied for.

Similarly, the RBS should document their assessment of the proposed Alternative Solution as he or she would have had the assessment been undertaken at the time the application for the building permit was being assessed.

It is good practice for the RBS to lodge documents showing design changes from the original stamped approved drawings. This should be done as soon as practicable after the departure from the original approved documents is identified and in any event, must be done at the time when the occupancy permit or certificate of final inspection is lodged with the relevant council.

In both the above cases, the same standards of documentation must be called on by the RBS when an Alternative Solution arises during construction phase as is required during the building permit application phase.

If there is a departure from the approved building permit documents during the work and when taking enforcement action the RBS is not prepared to determine that the as built work is an acceptable Alternative Solution, the applicant must be asked to either bring the work into compliance with approved documents

or the Regulations; or to apply to the Building Appeals Board for a modification to the Regulations under section 160 of the Act.

## 9. DOCUMENTATION TO ACCOMPANY OCCUPANCY PERMITS AND CERTIFICATES OF FINAL INSPECTION

The Act and Regulations require that the RBS must lodge a copy of the certificate of final inspection or occupancy permit together with prescribed documents with the relevant council.

This includes any computations or reports forming part of the Alternative Solution relied upon by the RBS and the written determination of the RBS stating that the Alternative Solution satisfies the relevant Performance Requirements of the BCA. 3 Section 73, regulation 1012 and 1013

The information lodged with the occupancy permit or certificate of final inspection is essential for future reference and understanding of the operational and maintenance requirements that must be applied in order for the Alternative Solution to maintain compliance with the Performance Requirements. The RBS should ensure that the applicants or their agent be supplied with a complete copy of the occupancy permit or certificate of final inspection and all prescribed documents at the end of a project for future use.

If you have a technical enquiry please email: [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or phone 1300 815 127

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