



LOCAL GOVERNMENT

Commencement of Building and Other Legislation Amendment Act 2006

On 1 September 2006, the *Building and Other Legislation Amendment Act 2006* and *Building Regulations 2006* commenced. The major implications for local governments are:

- changes to records keeping requirements;
- the requirement to notify building owners when building development approvals are about to lapse; and
- changes to procedures for assessment of various building related applications.

The commencement of the legislative instruments referred to above have resulted in the *Building Act 1975* being significantly restructured, the *Standard Building Regulations* being repealed, the previous *Building Regulations* being repealed and amendments to the *Integrated Planning Act 1997*.

Changes to local government record keeping requirements

Prior to 1 September 2006, building approval documentation for buildings or structures classified classes 2 to 9 under the Building Code of Australia were required to be kept for the life of the building, however building approval documentation for class 1a buildings (including single detached houses) and class 10 structures (such as sheds, swimming pool and fences) were only required to be kept for a minimum of 10 years (section 28 of the former *Standard Building Regulations*).

It was recognised that the lack of a continuous history of approvals for houses, sheds, fences and the like was causing problems for property owners, prospective purchasers and Councils. For instance, a swimming pool fence is required to at least meet the standards in force at the time the swimming pool was constructed, however there were often no records available indicating the relevant date if the swimming pool was over 10 years old.

The recently commenced amendments now mean that Councils (by virtue of their role as assessment

managers) are required to keep documentation relating to approved building development applications in their area (whether assessed by Council or by a private certifier):

- for all class 10 structures, except swimming pool fences, for the earlier of the demolition or removal of the structure or 10 years from when the approval was given; and
- for all other classes of buildings and for swimming pool fences, until the demolition or removal of the building or fence.

Following the commencement of the *Building and Other Legislation Amendment Act 2006*, this is now provided for in the *Integrated Planning Act 1997* (refer to sections 5.7.4(1)(h) and 5.7.4(6)). Various other obligations on Councils to keep documents available for inspection only inspection and purchase have also been moved from the *Building Act 1975* or the repealed regulations to one central location, being the *Integrated Planning Act 1997* (refer to the additional sub-clauses (1)(t) to (1)(y), (4), (5) and (6) at clause 5.7.2, the new clause 5.7.3 and the additional sub-clauses (1)(h), (1)(i), (5), (6) and (7) at clause 5.7.4).

The new clause 5.7.3 requires Councils to keep a copy of the *Building Act 1975* and Building Code of Australia available to the public for inspection. The reasoning for this provided in the Explanatory Memorandum accompanying the Bill, was that these documents “are generally difficult for the public to access easily [and] the BCA is subject to annual amendment and it is therefore not reasonable to expect members of the public to have to purchase it on a regular basis”.

Obligation to notify building owner when development approval is about to lapse

Building certifiers have been (and are still) able to impose a condition on a building development approval that the approval lapses if the building work is not completed within a specified time. Building owners encounter delays in construction and difficulties in obtaining inspection documents for certificate work already completed, if the building development approval lapses before the building

has been completed.

Chapter 4, Part 7 of the *Building Act 1975* now deals with lapsing of building development approval and related matters. In particular, section 95 provides that despite a condition imposed by a building certifier about the lapsing of the building development approval (and despite Chapter 3, Part 5, Divisions 5 and 6 of the *Integrated Planning Act 1997*), a building development approval only lapses if the assessment manager (often the Council) gives the building owner a reminder notice about the lapsing.

The reminder notice must:

- (a) be given no more than 6 months, but at least 3 months, before the lapsing time; and
- (b) state each of the following:
 - (i) the condition;
 - (ii) the lapsing time;
 - (iii) that the approval will lapse unless the development or aspect is completed by the lapsing time;
 - (iv) that if, under Integrated Planning Act 1997, the relevant period under Integrated Planning Act 1997, section 3.5.2138 for the building development approval is extended past the lapsing time stated in the notice the lapsing time will, under subsection (4), be taken to be when the extended period ends.

Before the lapsing time stated in the notice, a request can be made under section 3.5.21 to extend the relevant period for the building development approval.

To address the second difficulty encountered by building owners, the new section 122 of the *Building Act 1975* provides that if a building development approval lapses, the building certifier must ensure the owner of the building is, within 5 business days after the lapsing, given a copy of the inspection documentation for inspection of the building work. Building certifiers who fail to comply with this section may be fined up to \$6000 (80 penalty units).

Changes to procedures for assessment of various building related applications

Prior to 1 September 2006, Council approval was required to be sought in relation to certain matters (such as siting, setbacks, amenity and aesthetics) before a building approval was issued (whether by

Council or by a private certifier). It was considered that in doing so, Council was deciding a certain aspect of a building application in the same way a concurrence agency decides a certain aspect of a development application.

The *Building and Other Legislation Amendment Act 2006* effectively rolls building application into the Integrated Development Assessment System (IDAS) under the *Integrated Planning Act 1997*. The position now is that:

- Chapter 2 of the *Building Act 1975* specifies what building work is assessable development for the purposes of the *Integrated Planning Act 1997* and in this regard the Schedules of the *Building Regulation 2006* prescribe what constitutes exempt and self-assessable building development.
- Approval for building work which is assessable building development must be applied for, considered and assessed in accordance with IDAS and in this regard Schedule 2, Table 1 of the *Integrated Planning Regulation 1998* sets out referral agencies and their jurisdiction for building work assessable against the *Building Act 1975*. This Schedule has been amended to provide that Councils are concurrence agencies for the following aspects of a building development application:
 - Amenity and aesthetic impact of particular building work;
 - Whether particular buildings may be occupied for residential purposes;
 - Design and siting;
 - Fire safety in particular budget accommodation buildings;
 - Higher risk personal appearance services;
 - Building work for residential service;
 - Building work for removal or rebuilding; and
 - Building work for rainwater tank in designated rainwater tank area
- Subject to the new sections 32 and 33 of the *Building Act 1975*, each of the following is code that can not be changed under a local law, local planning instrument or local government resolution for the purposes of section 3.1.3(4) of the *Integrated Planning Act 1997*:
 - Chapter 3 and Chapter 4 of the Building Act 1975;
 - the fire safety standard;
 - any provisions of a regulation made

under the Building Act 1975 relating to building assessment work or self-assessable building work;

- any relevant local law, planning scheme provision or resolution made under section 32 or 33;
- the Building Code of Australia;
- subject to section 33, the Queensland Development Codes (*PLEASE NOTE: the definition of 'QDC' in the amended Building Act 1975 does not include all Parts of the Queensland Development Codes*).

Together with IDAS, the abovelisted documents are referred to in the *Building Act 1975* as "the building assessment provisions".

- Provision has been made in the *Building Act 1975* for Councils to use their planning schemes to relax the Queensland Development Code requirements for site clearance and boundary setback. Other matters which Councils are able to make declarations about are prescribed by regulation and presently include designating part of its area as a natural hazard management area (flood), declaring the level to which the floor levels of habitable rooms as defined under the Building Code of Australia of buildings on the land must be built (section 13 of *Building Regulation 2006*) and declare localities and forms of buildings or structures in its area exempt from inspection at a stage of assessable building work (section 25 of *Building Regulation 2006*).

Other changes affecting local governments

Other changes to the building legislation which Councils should note include:

- the development and introduction of code of conduct for building certifiers; and
- changes to section numbers under the *Building Act 1975* and the *Integrated Planning Act 1997* allowing Show Cause and Enforcement Notices to be issued (*PLEASE NOTE: this may mean that Councils need to check and/or update the section numbers referred to in precepts or templates used for such notices*).

Penalty Infringement Notices Discussion Paper

Currently, Councils usually have two, or sometimes three, of the following options for addressing breaches of the *Integrated Planning Act 1997*:

1. to seek declarations and orders from the Planning and Environment Court;

2. to prosecute offences in the Magistrates Court (which can result in a conviction and/or fine);

3. to complete compliance work and recover expense under s1066 of the *Local Government Act 1993*.

It has now been recognised that it is impractical for Councils to use these same channels to deal with minor and non-criminal breaches of the Act. In August 2006 the Department of Local Government and Planning released *The Penalty Infringement Notices (PINs) Discussion Paper* proposing to introduce a time-efficient and cost-effective option for Councils to deal with minor development offences, by enabling them to issue on-the-spot fines to deter further offences. The consultation period for this proposal has now closed, however the discussion paper is still available online. We will follow the progress of this proposal in subsequent editions of the Swanwick Murray Roche, Local Government flyer.

CONTACT US

Swanwick Murray Roche are your first point of contact for local government legal advice:

Ross Johnson

(Partner)

rjohnson@smrlaw.com.au

Kate Byron

(Solicitor)

kbyron@smrlaw.com.au

Phone: (07) 4931 1888

Facsimile: (07) 4931 1899