



These advisory notes are issued as and when is necessary to assist in the interpretation of Tasmanian building legislation and to keep the Industry informed of developments occurring with the Building Code of Australia and its reference documents.

Standard of imported structural steel bolts

The Federal Minister for Industry, Tourism and Resources has written to the Premiers and Chief Ministers of all States and Territories to alert the States and Territories of the possibility that some imported structural steel bolts imported into Australia and used in the construction industry are of poor quality. Although the steel bolts have been stamped as meeting the requirements of the relevant Australian Standards, testing certification supposed to accompany shipments or batches of these products is sometimes absent, deficient or incomplete and it is not possible to trace the non-conforming product to a particular batch or shipment. The Federal Minister has also written to the Australian Competition and Consumer Commission requesting that they investigate the matter for possible follow up action.

The Building Code of Australia (BCA) references AS 4100—*Steel Structures* as an acceptable structural standard for steelwork which requires that the structural steel bolts used comply with AS/NZS 1252—*High strength steel Bolts with associated nuts and washers for structural engineering*. The BCA also describes the evidence that can be used to demonstrate compliance with these Standards.

Bolted connections have the potential to be the weakest link in any structural steel framework if the incorrect type of bolt is used. All parties to the building process have a vital role to play in restricting the use of these poor quality bolts.

To ensure compliance with the Standards it is essential that design engineers and fabricators specify the details of the bolts to be used in the structural steel framework in relevant documentation. Suppliers need to source bolts that comply with the design specifications.

To prevent inferior products entering the market, importers and local manufacturers should have independent NATA or equivalent certified testing conducted on each batch of bolts. The testing should ensure that the bolts meet the requirements of the Standards.

End users of structural steel bolts should insist on receiving test certificates and statements of conformance specific to the batch of bolts being used.

Robert L Pearce, Director of Building Control

Please circulate to

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New International Fire Engineering Guidelines Edition 2005 now available

The International Fire Engineering Guidelines (IFEG) represents the third edition of the guidelines and supersedes both the first and second editions published in 1996 and 2001 respectively. The 1996 and 2001 editions are therefore no longer current and should not be used.

This product is provided as an A4 sized bound publication and includes an electronic version of the entire document on CD-ROM.

For more information on purchasing the International Fire Engineering Guidelines visit

www.abcb.gov.au

Building Act Issues

The Building Act 2000 has now been in force for 12 months. As expected, such a complex and wide-ranging piece of legislation brought with it a number of implementation issues. The following is a discussion on some of the issues raised with Building Standards and Regulation:

1. Unauthorised work

Issue – *Councils may not be aware that a project has commenced until a request for a Certificate of Completion (Building Work) is received.*

The *Building Act 2000* separated the roles of Building Surveyors and Councils (Permit Authorities) to provide contestable certification services to the public in accordance with Competition Policy.

Building Surveyors are responsible for assessment and construction compliance issues. Permit Authorities are responsible for the issue of the Building Permit and Certificate of Completion. They do not have a role during construction.

Permit Authorities (Councils) will be aware whether or not any building work is illegal **because they issue the Building Permits.**

Building Surveyors are required to provide a copy of any Occupancy Permit issued by them to the Permit Authority. Hence the Permit Authority will be aware of the occupancy status of any building. It is the Building Surveyors role to act in the public interest on all projects for which they are engaged and to make Permit Authorities aware of the progress of that work in accordance with the legislation.

It is recognised that there may be circumstances relating to infrastructure where a Council may need to be notified at the start of building work. This requirement could be included on the Building Permit by the Permit Authority (Council) as a relevant and reasonable condition. It is questionable whether all Councils need to be notified of all work starts.

2. Enforcement

Issue – *The enforcement process is cumbersome with requirements to serve multiple notices to effect redress for illegal activities.*

The enforcement provisions are based on the Model Act Legislative Provision and have been in use in other States particularly Victoria for some time.

The provisions provide for two levels of response to any illegal or non-complying work allegations. An initial **show cause building notice**, and then a formal building **order**. The show cause notice allows a person to respond to the notice (natural justice issue) be-

fore a more direct enforcement course of action is followed. Depending on the response to the notice the Council can decide whether or not to proceed with the building order.

Under previous legislation the lack of a show cause step frequently disadvantaged owners and builders.

Issue – *Councils need guidance in relation to issuing infringement notices.*

The provisions in the *Building Act 2000* mirror similar enforcement provisions in other legislation that Council's enforce. Infringements should therefore be treated the same as under other legislation. The *Building Act 2000* provides this new enforcement tool. It is up to the Individual Council whether they use this tool or proceed directly to prosecution.

Issue – *Powers of entry are too restrictive.*

The powers of entry under the *Building Act 2000* are similar to s.20A of the *Local Government Act 1993*. The relevant sections of the *Building Act 2000* are s.258 to s.260. There are also powers under s.37 to investigation a complaint against an accredited building practitioner by an authorised investigator.

3. Owner-builders

Issue – *Builders and Building Surveyors are being required to chase up details missing from start work notices.*

A start work notice is required under the Act. The builder is required to forward it to the Building Surveyor to advise the intended start work date. It only includes details of the building work, the builder and the date on which the work is to be started. The information is for the Building Surveyor so that he/she can determine the relevant project, the **final** builder's name and the particular time the work is to be started. It is part of the documentation record for the project.

The start work notice provides the Building Surveyor with a verifiable record of the builder's details provided by the **actual builder** and not from others sources (such as from earlier building permits etc that may have been filled out by someone else). This information on the builder and the project needs to be

correct, as it may have to be relied upon in court at a later time as the builder is responsible for the compliance of the building work.

A Building Surveyor who fails to require the correct information to be included on a start work notice is in breach of the Act.

The Director of Building Control recently wrote to all Accredited Building Surveyors on this matter. The Building Surveyor's role remains a public administration role, not a consultants role.

Issue – *Difficult to get start work notices returned.*

The Act requires Builders to submit start work notices and failure to do so is a breach of the Act. Building Surveyors need to reinforce this issue with builders early in the process. **The Building Surveyor's role is to enforce the Act.**

4. Annual Maintenance statements

Issues – *The position in relation to the amended Regulations still needs to be clarified. Need to ensure Councils understand how the process works. Need to develop standard processes and letter. Need public information campaign. What is the liability of a council?*

Building Standards and Regulation has recently published a Building Regulation News Update. Previously Building Standards and Regulation prepared and distributed many thousands of pamphlets. These are still available for Councils and Building Surveyors.

Building Standards and Regulation has developed a standard document that Councils can use to forward to commercial building owners in their area. A Preliminary Assessment Process document has also been developed for use by the public to determine if the provisions apply to buildings they own. These were developed in association with practicing building officials. It will be forwarded to Councils shortly.

Councils have a general duty **as far as is reasonably practical** to ensure that owners of property **are informed of their duties** under the *Building Act 2000* in relation to **maintaining** their buildings (s.18). A statewide public information campaign is not considered appropriate at this stage.

The liability of a Council should be considered in the context of their duty. Where a Council is aware that the maintenance is not being undertaken on a specific building, the Act provides them with the power to enforce compliance (s.163). This is as far as the liability extends. A requirement to maintain any building to

the required standards rests with an owner. This is similar to the onus on employers to provide a safe workplace.

5. Quantity of paper work

Issue – *Need to rationalise forms and reduce duplication of information required.*

Building Standards and Regulation has a process for reviewing the Approved Forms. Councils and industry were invited to make submissions on the Forms. A small number of submissions were made. The use of **standard forms** under previous building legislation was fully supported by Councils and industry as it allowed for consistency and certainty across the State. The forms increase legal certainty. They also provide direction and records of actions taken. A reduction in the number of forms will mean Councils and Building Surveyor will need to determine their own responses to the legislative requirements.

6. Definitions

Issue – *Need to clarify terms 'minor work', 'refurbishment', and 'repairs and maintenance' and provide guidance as to how it is applied.*

These are issues for Building Surveyors to determine based on their professional judgment and risk assessment of the proposal. The provisions provide flexibility in the regulation of the building industry. The building work still has to be in accordance with the BCA and the only issue is that it does not require a building permit. Building Surveyors are professionals. The community should be able to rely on them to make these sorts of decisions without having to provide prescriptive regulatory guidelines.

It has been suggested that the replacement of floor coverings requires a building permit. In accordance with r.4(1) of the *Building Regulations 2004* a building permit is **not** required for the repair or maintenance of an existing building if the work is done for maintenance purposes using similar materials, equipment, installations and components to those being replaced.

Issue – *Need to clarify what 'alteration' means.*

In accordance with s.55 of the Act, the Building Code of Australia (BCA) is the standard for building work in Tasmania and therefore anything in the BCA applies in Tasmania. In Part A1 of the BCA definitions (clause A1.1) 'alteration' is defined in relation to a building as **including an addition or extension** to a

building. Therefore for the purpose of the Act this definition applies in Tasmania.

The *Building Regulations 2004* further reinforce the issue in r.3(6) where it concludes that unless the contrary intention appears, an expression used in these regulations that is defined in the BCA has the same meaning in these regulations as in the BCA.

7. Building surveyor pecuniary interest

Issue – *Can a council employed building surveyor deal with council's own buildings?*

The answer is No. The prohibition on exercising the power of a Building Surveyor in s.52 of the *Building Act 2000* applies to all Building Surveyors even if employed by a Council or Government. This separation of powers underpins the independent public role of Building Surveyors.

A Council, which employs a Building Surveyor and offers statutory building surveying services, is in effect a corporate building practitioner. There is clearly a pecuniary interest.

In relation to a Council Building Surveyor providing advice to a Council on the maintenance required for an existing building, the answer is different. This is not a statutory function, nor the exercise of a statutory power. A council-employed Building Surveyor would therefore be able to advise the Council in these circumstances.

8. Private Certifiers

Issue – *The obligation of a private certifier needs to be clarified in terms of ensuring their clients comply with planning requirements. An example of this is the certifying of changes of plans midway through construction without first obtaining an amended planning permit.*

A Building Surveyor has the duty to ensure the compliance of a building with the provisions of the *Building Act 2000* and building permit (s.85(1)). In considering a building permit, a Permit Authority is to take into account any **relevant** requirements of any permit in force under any other Act (s.71). The building permit can include **reasonable** and **relevant** conditions applicable to the building work (s.72(2)). If a reasonable and relevant (to the building work) condition from a planning permit were included on the building permit then the Building Surveyor would need to ensure compliance.

However, if the condition was not relevant to the building work (such as the provision of a landscape plan) then a Building Surveyor has no responsibility

to ensure compliance. A Building Surveyor is not the enforcer of planning conditions that have no relevance to the building work. That is for the Council to enforce.

The *Building Act 2000* already includes a process for dealing with changes during construction that should pick up any planning issues. Where changes are proposed to building work for which a certificate of likely compliance has been issued, the Building Surveyor must consider the changes and if the changes are likely to effect any planning permit (s.71) must obtain the consent of the Permit Authority (s.85(2)).

9. Accreditation

Issues – *Fees are disproportionate to other States in Australia. Councils are being left to verify bona fide accreditation of architects, engineers. Website not up to date.*

There has been much misleading comment about fees in Tasmania.

Registration/accreditation means slightly different things in different states and the application and annual fee structures can be quite different. Any comparison therefore does not necessarily compare like with like. Tasmania has a relatively small number of building practitioners and little opportunity for economies of scale.

All regulatory parties in the building process have a role in verifying the accreditation of practitioners.

- Owners have a duty as far as is reasonably practical to ensure that they engage accredited practitioners.
- Building Surveyors should be verifying designers' accreditation before they accept their documents.
- Permit Authorities should be verifying Building Surveyor's accreditation before they accept their Certificates of Likely Compliance and verifying builder's accreditation or owner/builder status (as part of collecting information on insurance under the Housing Indemnity Act) before issuing a Building Permit.
- Building Surveyors should be verifying builder's accreditation when receiving their Start Work Notices in case a change has occurred.
- Building Surveyors need to be verifying both the designer and builder's accreditation if change occurs during construction.

The Building Standards and Regulation Register is updated as information is received from the Tasmanian Compliance Corporation. This is supplied regularly.

10. Referral to the Tasmanian Compliance Corporation

Issue – *Infringement Notices served on Building Practitioners.*

In accordance with r.35(3) of the *Building Regulations 2004* if an infringement notice is served on a building practitioner under section 243 of the Act and is not withdrawn, the General Manager or Director of Building Control who issued the notice is to forward a copy of it to the authorised body (the Tasmanian Compliance Corporation).

Concern has been expressed that Councils are not aware of the provision in the Act.

11. Training

Issue – *Training should be provided by BSR on role and conduct of permit authority.*

Building Standards and Regulation issued Training Documents in February 2004 on the roles of the Council, General Manager and Permit Authority.

These are still current and should be provided by a Council to a Permit Authority when appointed by the Council. Further Training can be provided when resources permit.

12. Certificates of Others

Issue – *Can building designers with restricted accreditation provide Certificates of Others (Form 55)?*

Form 55 (Certificate of Others) is intended for use, as the name implies, as a certificate from persons OTHER THAN a Permit Authority, building surveyor or general manager or designers that may be relied upon without further enquiry.

The Director's Determination made on 12 July 2004 specifies the qualifications and experience of the "Others" whose certificate may be relied upon. If the "Other" is not the designer, it is acknowledgement of a form of peer review or specialist advice.

The Director has determined that the level of qualifications and experience that may be relied upon is in general the unrestricted level of accredited building practitioner.

New generation house energy rating software— AccuRate

AccuRate is the first of a new generation of house energy rating assessment tools designed to provide an improved capability to assess the energy efficiency star rating of a house.

AccuRate has been developed by CSIRO for the State, Territory and Commonwealth Governments. It will replace the current *NatHER* software and set new performance criteria for upgraded versions of *BERS* and *FirstRate*.

The Australian Greenhouse Office and State and Territory Governments of Australia have conducted an extensive national program of demonstrations and trials of *AccuRate*, prior to its commercial release later this year. The Association of Building Sustainability Assessors (ABSA) has been engaged to manage this Pilot Program.

The new generation of house energy rating software will play a key role in future building regulation and the assessment of alternative solutions. Half-day seminars have been conducted around the country with one in Launceston and one in Hobart. Attendance was free and open to all builders, designers, architects, certifiers and regulators.

After the initial seminars volunteers were sought to use *AccuRate* to assess projects as part of a Pilot Pro-

gramme and provide feedback on *AccuRate*'s performance. Pilot participants attended a free, three-day training course in early July in Hobart. This training was based on the proposed National Accredited Course for Residential Building Thermal Performance Assessors. It is intended that this course will, once recognised within the *Australian Qualifications Framework*, become a bench mark for all practicing assessors. It will represent a significant increase in the level of skill and knowledge required for House Energy Rating assessors.

Participants in the trials who have successfully completed the training have been given an Assessor Number and will during the trial period be submitting *AccuRate* Rating Certificates on projects to building surveyors.

In Tasmania for the period of the trials, these *AccuRate* Pilot assessments will be accepted as verification of compliance with the energy efficiency requirements of the Building Code of Australia (currently only *NatHERS*, *BERS* and *FirstRate* are accepted.) The trials have started and will close on 23 September 2005.

For the purposes of Section 266 of the *Building Act 2000* and in accordance with regulation 14 of the *Building Regulations 2004* the Director of Building

Control has issued a Determination for the purpose of undertaking the National Pilot Program of Trials in Tasmania using the new regulatory version of the *AccuRate* House Energy Rating Software. He has determined the expertise and qualifications required for a person to issue an Energy Efficiency Certificate (described in Schedule 1 of Director of Building Control's Determination on Certificates of Others, Revision 1, dated 12th July 2004) is the successful completion of the *AccuRate* training held in Hobart on the

4th, 5th, and 8th July 2005 and the allocation of an assessment number by the Association of Building Sustainability Assessors Inc. (ABSA) together with appropriate Professional Indemnity Insurance. Building surveyors will be able to rely on a certificate issued by these persons.

Further information of the trials can be obtained from Building Standards and Regulation.

Protection of openings for service installations that penetrate fire rated elements

Reprint of an Advisory Note issued by the Australian Building Codes Board—July 2005.

Purpose

The purpose of this Advisory Note is to inform industry and remind regulators of the requirements of the Building Code of Australia (BCA) Volume One with respect to services that penetrate building elements that are required to have a fire resistance level (FRL) and to clarify the forms of evidence that may support a claim that a material, construction or design achieves a BCA Performance Requirement or Deemed-to-Satisfy (DtS) Provisions.

BCA Deemed-to-Satisfy Provisions for Openings for Service Installations

As stated in the Guide to the BCA, Clause C3.15 has the intent to maintain the fire performance of building elements by limiting fire spread by way of service penetrations.

C3.15 requires the installation of a service that penetrates a building element (other than an external wall or roof) to be installed so that the integrity or insulation or a resistance to the incipient spread of fire is maintained.

C3.15 (a) requires that a penetration sealing system to be identical with a prototype assembly that has been tested in accordance with AS 4072.1 - *Components for the protection of openings in fire-resistant separating elements-Service Penetrations and control joints*) and AS 1530.4 - *Methods for fire tests on building materials, components and structures-Fire-resistance tests of elements of building construction*. The prototype tested must achieve the required fire-resistance-level (FRL) for integrity and insulation or resistance to the incipient spread of fire. The applicable definition of FRL can be located in Part A1 of the BCA.

C3.15 (b) requires compliance with C3.15 (a); how-

ever it does not require the prototype assembly to achieve an FRL with respect to insulation if the service is:

- Protected so that combustible material cannot be located within 100mm of it; and
- not located in an exit.

The concession for insulation applies for example where a steel box is provided around the service and combustible material cannot be located within 100mm of the tested prototype. Other methods may be used.

C3.15 (c) to (g) specifies the Standard that the service penetration must meet.

Fire Stop Collars

Fire stop collars installed on plastic pipes are a common means of maintaining the required FRL of walls and floors. The requirements of C3.15 apply so that the installation must be in accordance with the particular tested prototype in accordance with AS 1530.4 and AS 4072.1. For example, a fire stop collar installed on a plastic pipe used in a floor waste gully must be tested for that application. A test for another application is not in compliance with the BCA requirements of C3.15. The exception is under C3.15 (e) for a UPVC sanitary plumbing service installed in specific areas and in accordance with Specification C3.15.

AS 1530.4 and AS 4072.1

AS 1530.4 - *Methods for fire tests on building materials, components and structures. Fire-resistance tests of elements of building construction* This Standard sets out the criteria for heating conditions, test procedures, for the determination of fire resistance of an element of building construction. In most cases, a single test, carried out in accordance with this standard establishes the fire resistance for the element of construction concerned. Clause 2.7.2 of AS1530.4

for the test specimen details the form and composition of those applying in practice and Clause 2.14 reporting of results includes details that must be included in the test report.

AS 4072.1 sets out the criteria for the testing, interpretation of test results, installation and certification of sealing systems around penetrations through separating building elements which are required to have an FRL or, if applicable, a resistance to the incipient spread of fire. Clause 3.2 requires that where a particular penetration sealing system is intended for use in both horizontal and vertical elements of construction, each orientation must be tested. For floor waste applications, Clause 4.6.2 requires that in addition to Clause 3.2 a penetration sealing system must not be used to protect a plastic floor waste system unless it has been tested in that configuration.

Clause 3.5 requires that in addition to the information required by AS 1530.4 the test report shall include temperature data from all critical thermocouples specified in AS 4072.1 and AS 1530.4 and detailed description of the penetrating services and the test construction.

Evidence of Suitability

Evidence of Suitability, A2.2, BCA Volume One has the intention of detailing evidence which may support a claim that a material, construction or design achieves a Performance Requirement or DtS Provision including penetrations such as those requiring fire stop collars. A2.2 is subject to compliance with A2.3 - Fire Resistance of Building Elements and A2.4 - Fire Hazard Properties.

A2.2 represents the minimum level of documentary evidence needed to show that a material, construction or design meets BCA requirements. There will be times when this evidence will need to be produced and sighted. The evidence can be required by:

- an appropriate authority
- a party to a construction contract; or
- a person certifying compliance with the BCA

A2.2 (a) (i) to (v) lists the forms of evidence that may be one or a combination of:

- (i) A report issued by a Registered Testing Laboratory.

The report from this source must show that the material or construction has been submitted to specifically

listed tests that set out the test results and include any other information which demonstrates that the subject of the report is suitable for use.

- (ii) A current Certificate of Conformity or a current certificate of Accreditation.

This source of evidence applies to materials, construction and designs.

- (iii) A certificate from a professional engineer or other appropriately qualified person.

Evidence gained from this source applies to materials, construction and designs. In both cases the term appropriately means a person whose qualifications and experience satisfy a regulatory authority.

- (iv) A current certificate issued by a product certification body that has been accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ).

This source of evidence applies to materials, construction and designs, JAS-ANZ, as it is known, is the peak organisation for the accreditation of third party certification bodies.

A current Certificate of Conformity issued by any group (including Standards Australia) that bears accreditation from JAS-ANZ is an acceptable form of evidence.

- (v) A current Product Listing Data Sheet and listing entry in the Register of Fire Protection
- (vi) Equipment, as issued by Scientific Services Laboratory under its Active Fire Scheme.
- (vii) Any other form of documentary evidence that correctly describes the properties and performance of the material or form of construction and adequately demonstrates its suitability for use in a building.

There is an onus on any party submitting such evidence to clearly indicate what is required from that evidence. If a building proponent does not produce exactly what is required, the evidence may be rejected.

A2.2 (b) requires that any copy of documentary evidence submitted, must be a complete copy of the original report or document. An incomplete copy of an original report or document is not sufficient evidence of suitability. The complete copy of the original report or document provides pertinent information for

consideration of A2.2 compliance.

A detailed report in accordance with the requirements of AS 1530.4 and AS 4072.1 and A2.2 for protection of openings for service installations satisfies C3.15 (a) and (b).

In accordance with AS4072.1 Clause 3.5, the test report shall include the following:

- (a) Temperature data from all critical thermocouples specified in this standard & AS1530.4.
- (b) A detailed description of the penetrating services.
- (c) A detailed description of the test construction.

In accordance with Clause 2.14.2 of AS1530.4 the test report shall contain information such as the following:

- (a) The name of the testing authority
- (b) The name of the applicant
- (c) The name of the manufacturer and the trade name, if any, of the element
- (d) The date of the test
- (e) The general construction and dimensions of the assembly as tested, together with the identifying numbers of any drawings or specifications of the specimen.
- (f) The ambient temperature of the test area at the commencement of the test etc.

Clause 2.7.2. of AS1530.4 states that the test specimen shall be:

- (a) representative of the element of construction; and
- (b) Made of materials and to standards of workmanship representative of those applying in practice and as defined in relevant Australian Standards.

Performance Requirements

A Building Solution which complies with the Deemed-to-Satisfy Provisions is deemed to comply with the Performance Requirements.

Compliance with the Performance Requirements can also be achieved by:

- formulating an Alternative Solution which complies with the Performance Requirements or is shown to be at least equivalent to the DtS provisions; or
- a combination of compliance with the DtS Provisions and Alternative Solution.

In particular to service penetrations, Performance Requirement CP8 requires openings and penetrations in building elements to resist the spread of fire. CP8 should be read in conjunction with Performance Requirement CP2 for spread of fire. CP8 deals with any opening or penetration within a building element and CP2 deals with the building element itself.

The Performance Requirements relevant to an Alternative Solution must be determined in accordance with A0.10. A0.10 sets out the method of determining the appropriate Performance Requirements to be used when an Alternative Solution is used to prove that a Building Solution complies with the BCA. For example, other BCA provisions for sound insulation and energy efficiency may be pertinent for the particular service penetration. The Alternative Solution should also relate to the uniqueness of the application relating to the specific site, refer to o.0.3 of the International Fire Engineering Guidelines (IFEG).

Further Information

Further information about the *Building Act 2000*, the *Building Regulations 2004*, the *Plumbing Regulations 2004* and the *Building Code of Australia (BCA)* can be obtained from: www.wst.tas.gov.au/building

or from **Building Standards and Regulation**, 30 Gordons Hill Road, Rosny Park, 7018 or P O Box 56, Rosny Park 7018 or

Phone: Helpline 1300 366 322 Fax: (03) 6233 8338 Email: wstinfo@dier.tas.gov.au

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