

ASSESSMENT OF DEVELOPMENT APPLICATIONS AGAINST LOCAL LAWS

Purpose

The purpose of this Newsflash is to remind building certifiers of their obligations to consider those local laws referenced under the *Building Act 1975*.

Local laws which must be considered

The Standard Building Regulation (SBR) is a code for the purposes of IDAS. Therefore any local laws called up by the SBR are also codes for IDAS.

When assessing development applications, a building certifier must have regard to the following local laws recognised by the Building Act:

- Section 13 of the Building Act requires development applications for building work to comply with local laws dealing with the fencing of, and openings giving access to, swimming pools; and
- Section 45 of the Standard Building Regulation (SBR) states that the council may prescribe alternative siting requirements for domestic buildings in Part 3 under a local law existing at the commencement of section 45 (April 30, 1998).

Other local laws are not codes under IDAS

Other local laws are not codes for the purposes of IDAS. Therefore, under the IPA, compliance with the local law does not need to be assessed by the building certifier.

However, if an aspect of development is regulated by a local law, then compliance with it is still binding on the owner even if the Building Act does not address the matter. Compliance with the local law may nevertheless affect the design and specifications of the building.

Therefore it is in the client's interest that any local laws impacting on the development are brought to their attention.



Building certifiers cannot refuse certain applications

If there is a local law about swimming pool fencing or siting requirements, development applications for building work would need to be assessed for compliance with those provisions by the building certifier.

A private certifier may only assess a development application for building work that involves “alternative siting provisions” against the prescriptive provisions of a local law. The performance provisions can only be assessed by the local government (refer to section 46 of the SBR).

If a development application does not comply with the relevant parts of the local law, the building certifier must refuse the application or impose conditions which will ensure compliance with them.

If an aspect of development is the subject of a local law that does not address the construction of swimming pool fencing referred to in section 13 of the Building Act, or the siting requirements of Part 3 of the Standard Building Regulation, a building certifier cannot refuse to issue the development permit on the grounds that the building work does not comply with the local law. However, the owner of the development is still obliged to ensure all other aspects of the local law, that are not required to be assessed by the building certifier, are satisfied.

Building certifiers should make themselves aware of any local laws that may impact on their clients’ development. As a matter of good practice, they should ensure their clients are given sufficient information to enable them to make their own enquiries with the local government.