



## PROFESSIONAL PRACTICE:

### Consistency between Planning and Building Consents

The Building Policy Branch of Planning SA has been receiving numerous enquiries relating to the issue of consistency between Provisional Development Plan Consents (PDPC) and Provisional Building Rules Consents (PBRC) particularly where the PBRC is issued by a private certifier. This Advisory Notice seeks to address those queries and should be read in conjunction with Advisory Notice 20/03 on *Advice on the inclusion of Building Rules matters in Provisional Development Plan Consents*.

#### GENERAL

Section 33 (1) of the Development Act refers to a development being an approved development only if a relevant authority has assessed the development against the provisions of the appropriate Development Plan and against the provisions of the Building Rules and a consent has been granted for each, as well as any other relevant consents. When all consents have been obtained then the development approval is issued requiring compliance with each consent and any conditions.

#### PROVISIONAL DEVELOPMENT PLAN CONSENT

During the assessment of a development application against the Development Plan a number of sensitive issues can be the subject of negotiation with the applicant. These are normally resolved in one of two ways :

- By changes to the drawings.
- By conditions placed on the PDPC.

#### PROVISIONAL BUILDING RULES CONSENT

Following the granting of PDPC the applicant usually arranges from more complete documentation to be prepared detailing the construction for PBRC and for use on-site.

When the applicant lodges these documents for PBRC there is clearly a need to make certain that the project designated in those documents is essentially the same project as the one that received PDPC. To proceed with a Building Rules assessment without this check can result in extensive delays for the applicant later in the process due to an invalid PBRC.

#### CHECKING FOR CONSISTENCY

To avoid delays and streamline the approval process, a private certifier has an obligation under Regulation 89 (2)(b) to take into account the PDPC and any conditions or notes and under Regulation

92 (2)(c) to make certain that the documents submitted for PBRC are “consistent” with the PDPC.

Accordingly it is reasonable to expect that the private certifier has:

- Sighted the PDPC and any conditions or notes.
- Determined that the project defined in the documentation submitted for PBRC is the same project that received PDPC and is consistent with it. In particular, siting, number of floors, building area, set backs, building form and identified uses should all be the same as the PDPC and there should be a high degree of correlation with other elements. In particular, anything that is specifically identified on the PDPC drawings with a clear note (such as building levels, dimensions, particular treatments/finishes) should be the same. *For Example: Projects where buildings have been relocated on a site and/or the plans reversed, are quite different to the PDPC.*

There will frequently be slight variations between the drawings that receive PDPC and those submitted for PBRC as the design process itself can result in changes to the design details as construction detailing and final design issues are resolved. However, it is often impossible for a private certifier to know whether all the significant matters relating to the PDPC have been included in this documentation. In particular where issues have been resolved with council staff for PDPC they may be indicated by;

- **Changes to the drawings.** – A private certifier cannot be expected to know if a particular feature is the result of negotiations for PDPC or are a decorative feature wanted by the client.

*For Example: Obscure or decorative glass indicated on upper floor windows in the PDPC drawings might not have any PDPC significance and the absence of such glass on the PBRC drawings could merely be the result of a change of mind regarding the design by the designer or the client.*

Similarly, small changes in dimensions and levels are common and a private certifier cannot be expected to know if such changes have any PDPC significance.

- **Conditions placed on the PDPC.** – Where the documentation submitted for PBRC have not indicated compliance with a condition on the PDPC it could be argued that the PDPC is still an integral part of the Development Approval and there is no need for the PBRC documents to contain such detail. However, as the PBRC drawings are usually those that are used as the basis for construction the private certifier should reiterate the need for compliance with the PDPC conditions in some way.

*For Example: If it was clearly a PDPC condition that certain upper floor windows are to be obscure glass but it is not indicated on the PBRC drawings then it would be proper for the private certifier to provide a handwritten note on the drawings indicating the windows that need to comply with the PDPC condition. Of course it would be preferable for the documentation to be actually changed but the private certifier would be acting properly by providing a note on the drawings as it adequately draws attention to the PDPC condition for anyone using the drawings for construction, inspection or enforcement purposes.*

## CERTIFICATION OF CONSISTENCY

Under Regulation 92 (2)(c) the private certifier is required to certify consistency with the PDPC including any conditions or notes. Such certification can only be expected to cover the checks described above.

Any PDPC conditions or notes that seek to pre-empt the building rules assessment are probably unlawful (refer to Advisory Notice 20/03) and it should not be expected that the private certifier would certify consistency with such requirements.

If the relevant authority (council) receives PBRC documentation from a private certifier that indicates the proposed project is substantially different from the one that received PDPC in major respects (such as siting, area, number of storeys), then it can be argued that such a PBRC is for a completely different project. Such a project has not received a PDPC and as Regulation 89 (2) (b) provides that PBRC cannot be issued before a PDPC is granted (other than for complying development) then the PBRC itself is not valid and the relevant authority cannot accept it. It is suggested that the relevant authority advise the applicant that the project has been altered such that it is no longer the same project that received PDPC and return the documents to the private certifier as an invalid PBRC.

Similarly, a PBRC that has been certified by a private certifier **before the date of the PDPC is not valid** and should be returned to the private certifier for verifying consistency once the PDPC is issued.

Where the PBRC proposed project is essentially the same as the one that received PDPC, then the private certifier has properly checked for consistency and the PBRC should be accepted by the relevant authority as a valid PBRC. If the private certifier has provided notes on drawings highlighting the need for compliance with PDPC conditions then these should also be accepted.

If then, there are small inconsistencies that are still of PDPC significance then the relevant authority (council) may seek to have the PBRC documentation amended to be certain that the documents receiving development approval, for construction purposes, are complete. However, the relevant authority should refer these matters to the applicant for resolution as it is essentially the applicant's problem and not the private certifier's. By referring such matters to the private certifier (who has properly undertaken the certification function) it could be argued that the relevant authority (council) is placing the private certifier in the position of being the applicant's agent, which is not a role that the private certifier can undertake. To resolve such inconsistencies with the PDPC the applicant may elect to either;

- seek a new PDPC (as a variation to a previous authorisation, Section 39 (6) &(7)) and risk it being refused, **or**,
- have the PBRC documentation altered to make it consistent with the PDPC and get it re-certified by the private certifier.

Which ever is chosen is a matter for the applicant.

A relevant authority (council) should deal with any matters concerning the resolution of inconsistencies within 5 days of receiving the PBRC.

If a relevant authority (council) is unable to issue a development approval, because of the significance of any inconsistencies, and is unable to resolve the matters with the relevant parties then it is suggested that the development approval be formally refused so that the parties involved can appeal to the Environment Resource and Development Court for a determination.

### Further information

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