



BUILDING NOTE

NUMBER 34-2005

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REVIEW (APPEAL) RIGHTS CONCERNING CONDITIONAL BUILDING LICENCES

Background

This building note outlines the review provisions associated with a refusal by a local government to approve plans and specifications as submitted, and the attendant issue of a conditional building licence, in accordance with Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* (the Act).

A person may submit plans and specifications to a local government for approval. The local government may indicate approval of plans and specifications as submitted but at the same time issue a building licence subject to some conditions being met. In other words the local government may not be prepared to approve the plans and specifications as submitted, but may be prepared to approve them subject to minor changes imposed by way of condition. To avoid unnecessary bureaucracy, the local government may issue a building licence for an amended set of plans and specifications by marking-up the submitted documents, or by describing changes as 'conditions' to be met. This constitutes a refusal to approve the plans and specifications as submitted, and can be reviewed.

Recommendation

The local government may issue a building licence with amended plans and specifications to allow a person to commence the works while perhaps negotiating with the local government over the amendments. However, it is recommended that instead a local government informs the applicant of any amendments or conditions it intends to require concerning on the plans and specifications, before the licence is issued. This will afford the applicant the opportunity to resolve any concerns at a local level, rather than relying on the appeal provisions in the Act.

Forcing the applicant to apply, in accordance with Section 374(2)(a) of the Act, for a review of a refusal to approve plans and specifications, whether it involves the imposition of a condition, or conditions or not, by the State Administrative Tribunal, where no opportunity has been given to the applicant to deal with concerns may result in additional costs to the applicant and/or the local government through delays in construction, or administering the statutory right of review.

It is further recommended that when a local government specifies conditions on plans and specifications and issues a building licence to commence the works, the licence should be endorsed with or accompanied by a statement that the plans and specifications submitted to the local government are refused, however are approved subject to changes imposed by way of conditions.

Proposed amendments to legislation

The Department of Housing and Works is reviewing the appeal provisions under Section 374, and may for the purpose of clarifying any ambiguity, propose an amendment to that Section more clearly identifying a right to lodge an application to the State Administrative Tribunal for review of a condition, or conditions, placed on a building licence.

If you require further information, please contact the Building Codes and Regulation Branch of the Department of Housing and Works at buildingcontrol@dhw.wa.gov.au; or Mr Paul Scalzi, Building Advisory Officer on (08) 9440 2349.



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