WHAT IS A PCA?

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A certifying authority must not issue a construction certificate for building work unless it is satisfied that the following matters are identified in the proposal:

(a) the plans and specifications for the building include such matters as each relevant BASIX certificate requires, that the design and construction of the building are in accordance with the Act and the standards and any other information furnished to the certifying authority; and

(b) the proposal is made in accordance with the requirements of the Act.

Clause 146 of the Regulation further provides:

146 COMPLIANCE WITH CONDITIONS OF DEVELOPMENT CONSENT

A certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it is satisfied that each of the conditions to which the consent is subject has been complied with, and each condition or agreement requiring the provision of security before work is carried out in accordance with the consent (as referred to in sections 94A or 94A of the Act) is in accordance with the consent.

Clause 146 also provides:

Judicial interpretation of Clause 146 of the Regulation also reflects the nature of the work which the PCAs are dealing with and the considerations they must apply when exercising their role in being satisfied of compliance with development consent conditions. The comments of Talbot J in Baulkham Hills Shire v. Morris [2000] NSWSC 404 are germane in this sense, in stating that:

It is not appropriate to construe a development consent or an agreement as not in accordance with the consent (as referred to in section 94A or 94A of the Act), every condition or agreement entered into as a condition of the consent, and the considerations the owner of the property or the developer must apply when exercising their role in being satisfied of compliance with the requirements of the development consent, or any plans and specifications, or any plans and specifications referred to in the consent.

In the Talbot J’s judgment, the PCA was held to have breached its statutory obligations, although in both cases there was some degree of difference between the requirements of the development consent and the plans and specifications certified by the PCA. In both cases was the case for the PCA’s failure to consider the suggestion that the job description of the PCA is expanding on a case by case basis and that the PCA has a certain degree of responsibility in respect of the professional opinion in the fulfilment of their regulatory function.

In the case of VSC 279, it was held that a construction certificate must not be issued for building work that is not in accordance with the development consent and the plans and specifications certified by the PCA.

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The role of the Accredited Certifier is to make the statutory determinations required after the application for the development consent has been successful, and to do so in a detached way free of any (reasonable) perception of conflict of interest.

In O’Connor K’s reasons for decision in the Stapleton case, He affirmed the protocol proposed by the Department which made practical reference to the functions of the PCA. Although the focus of the protocol is the avoidance of conflict of interest, it is nonetheless a useful summation of the duties of a PCA which are not so specifically referenced by the legislation. The standards are that a PCA for a particular development must undertake a part of the functions of:

(a) determine applications for Part 4A Certificates

(b) determine applications for complying development certificates

(c) accept appointment as the CA (d) carry out inspections, including mandatory critical stage inspections (e) issue notices requiring work to be carried out (f) liaise with the consent authority, the local council and the public on matters pertaining to the development

Accredited Certifiers must not perform any other function in relation to a development for which they are involved as the Accredited Certifier or PCA, unless such a function is carried out in fulfilment of a statutory obligation imposed on the Accredited Certifier. A PCA cannot provide additional advice including administrative assistance in the development applications for development lodgements or any related design solutions for a particular non-compliance issue.

The role, functions, duties and responsibilities of the PCAs are not defined by any section of the Act or any extract of judicial deliberation, but rather by a combination of all the sources that are available and the issues that necessarily arise from a job mandated by legislation.

However, this present discussion of the role of PCA would be incomplete without reference to the landmark case Toomey v. Mosman. Municipal Council & Anor [2001] VSC 279. Although it is a Victorian case and refers to the Victorian equivalent to a PCA, that is, the relevant building surveyor, it is a useful summation of the duties of the accredited certifier.

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