

Building permit regime in need of urgent modification

In the mid 1990s a performance-based building code was introduced by the Australian Building Codes Board.

It revolutionised building control by injecting flexibility into the building approval system.

Before BCA 1996, a building permit could only be issued if the designs complied with the provisions of the BCA.

This meant that the options for innovative design solutions were limited.

Admittedly one could apply to the likes of government-controlled referees bodies to modify designs, but such power was never vested with building surveyors.

The design flexibility and the performance approach were in keeping with some international trends. The virtues were identified as being significant cost savings to developers and builders and the opportunity for more innovation and flexibility.

This has been the case and the economics have been compelling. In short, the revolution has been a success.

But there is one feature of the performance system that requires immediate scrutiny.

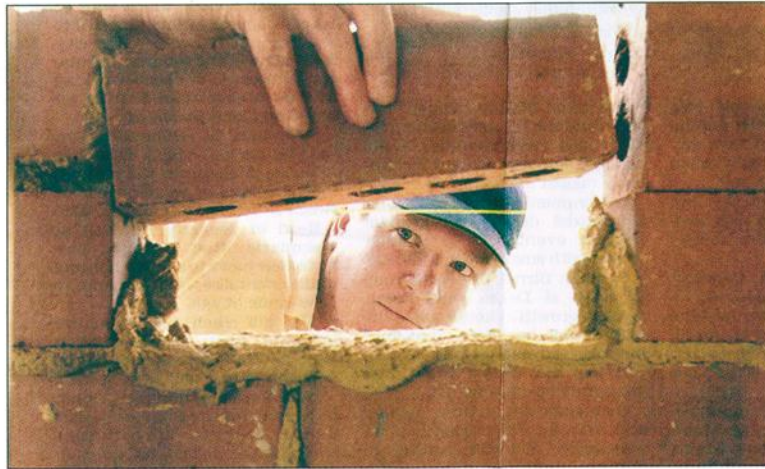
Under the performance regime, a huge amount of discretion and power resides with building surveyors to sanction performance solutions.

The surveyor has to decide whether designs comply with the provisions of the BCA or the alternate solutions. If the surveyor is satisfied that the proposal will not compromise the performance benchmarks of the



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The recently overhauled regulatory system still has a few flaws



Trade off: The approvals system needs to find the right balance between savings and safety

BCA he or she can give it a green light.

An alternative solution can be sanctioned under the BCA by reference to recognised standards, verification methods or expert opinion.

Expert opinion is the most common form of alliterative solution.

The problem with expert opinion is that what one expert thinks is okay may not accord with another's views.

Such opinion is therefore fallible.

Critiques of the system say that far too much power or discretion is given to the relevant building surveyor; regardless of

whether that surveyor is a council or private building surveyor.

Before BCA 1996 was introduced, if one wished to vary the requirements of the BCA then the applicant had to apply to a government department.

In NSW and Victoria the government bodies had "mod committees" that assessed such applications.

Their members were experts, highly regarded and remunerated by the departments rather than the client. They were immune from the pressures of the building site and the project and were totally at arms length.

When BCA 1996 came into force the number of applications to these committees dropped by 90 per cent.

Little wonder, building surveyors could now exercise these potent discretions — and therein lies the danger.

Where once any variation to the BCA provisions could only be approved by arms-length committees, the opposite is now the case.

Building surveyors who have an intimate connection with the client, in that they are retained by the client to co-ordinate and issue permits, now exercise the powers that were once the purview of arms-length committees.

The fact is that building surveyors are not removed, or arms-length, in the ideal sense from the project and the client.

That is not to say they can be coerced but that they can find themselves subjected to remarkable pressure, a type of pressure that may not sit comfortably with the tenets of

public safety, in that there would exist the potential for compromise.

A prominent American fire engineer, who was a co-speaker at a conference on fire engineering, opined that property entrepreneurs are primarily motivated by commercial considerations. If they are looking for a design solution, the primary driver is not that it will increase the benchmarks of public safety, rather it is economic.

He was probably a bit harsh. Nevertheless if there is a yearning, regardless of the driver, to deviate from the rules deemed to satisfy provisions of the BCA, there must be legislative mechanisms that ensure that a judgment cannot be compromised by commercial considerations.

The regulatory system as it stands is not sufficiently holistic and does not afford the public with the requisite levels of protection.

To achieve this, independent review should be reinstated. The reviewers could be on government-nominated panels or panels generated by reputable bodies such as Institution of Engineers, Australia, the Australian Institute of Building Surveyors, or the Australian Institute Of Building.

The critical outcome is for the reviewers of alternate solution-oriented design proposals to be truly arms-length from the project, both in reality and in perception.

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