



Customer
Service

Design and Building Practitioners Act 2020 and Design and Building Practitioners Regulation 2021

Angus Abadee, Director Building and Construction Policy,
Department of Customer Service
angus.abadee@customerservice.nsw.gov.au

The regulatory landscape

- From 10 June 2020, owners of buildings with defects have benefited from the statutory duty of care that applies to new buildings, and existing buildings where an economic loss first became apparent in the previous 10 years.
- From 1 September 2020, the [NSW Building Commissioner](#) has been able to stop an occupation certificate from being issued, order developers to rectify defective buildings, and issue stop work orders in prescribed circumstances under the *Residential Apartment Building (Compliance and Enforcement) Act 2020*.
- From 1 July 2021, there will be [compulsory registration for practitioners](#) involved in certain design and building work, including professional engineers, on class 2 buildings and mixed-use buildings with a class 2 component.

The D&BP Scheme applies to buildings that are Class 2, or contain a Class 2 component

A Class 2 building is a building containing two or more sole occupancy units, with each being a separate dwelling (NCC Vol 1, A6.2)

Examples of include:



Single storey
attached
dwellings with
common
basement carpark



Dwelling with
a granny flat
vertically
attached



Multi-residential
apartment buildings

Examples of mixed use buildings with a Class 2 component:



Apartment
building with a
carpark



Apartment
building with
shops on the
first floor



Apartment
building with
offices occupying
some floors

Exempt building work is outside the regime

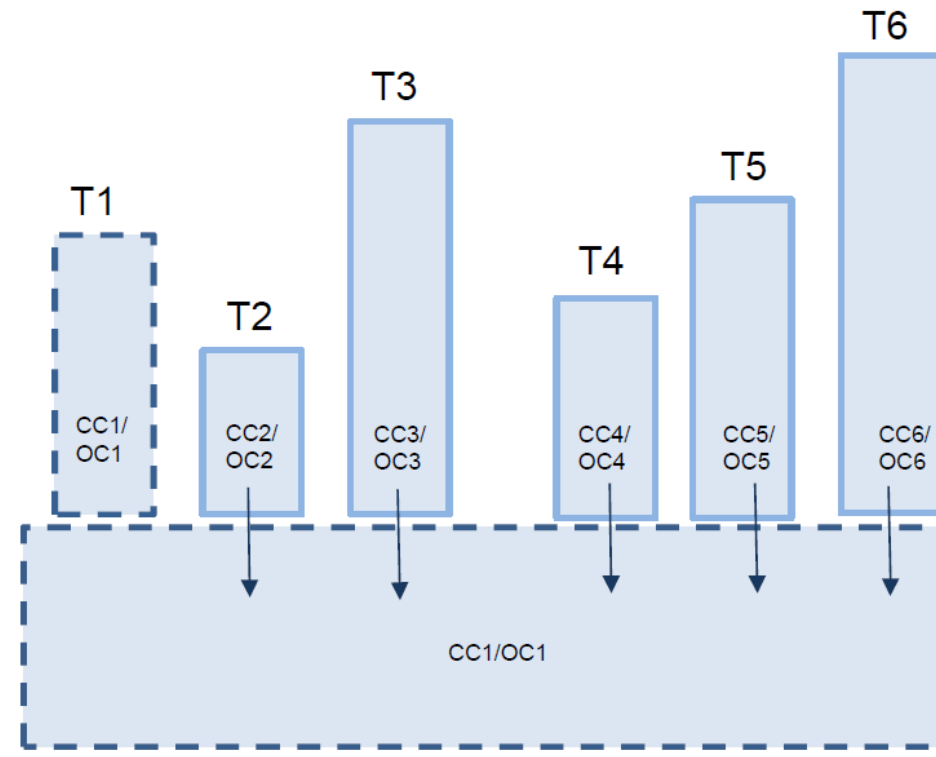
You do not need to make compliance declarations for excluded or exempt work including:

- Work which is carried out as “Exempt development”
- Work done in compliance with a s124 Local Council order or development control order (unless it relates to cladding)
- work done under a contract where a party received a HomeBuilder grant
- Work that is exempt from a provision of the BCA by the EPAA

See clause 13 of the [Regulation](#) for all of the excluded types of work

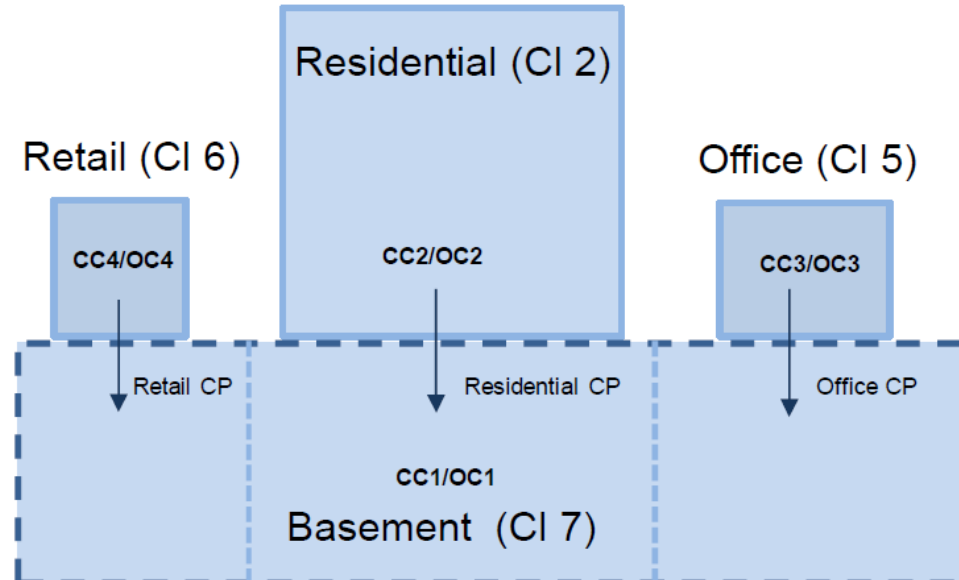
Multi Tower Single Use (above common Basement)

- Basement across entire site – delivered in 1 stage
- 6 towers above (all Residential) – delivered in 6 stages
- 6 OC's requiring 6 CC's



Mixed Use Development (above common Basement)

- Basement across entire site – delivered in one stage
 - 70% parking for Residential use
 - 20% parking for Office use
 - 10% parking for Retail use
- Single Residential tower above
- Office adjacent Residential tower
- Retail adjacent Residential tower
- 4 OC's requiring 4 CC's



Who needs to be registered?

The final *Design and Building Practitioners Regulation 2021* is now [available here](#).

There are two new registration schemes being introduced:

1.

Registration of
Professional Engineers



2.

Compliance Declaration
Scheme for Design and
Building Practitioners



How does registration work?

- Key takeaways:
 - All engineers need to be registered, only those design and building practitioners signing off on work need to be registered
 - While practitioners can be registered in multiple classes, they can only do work in classes they are registered in
 - Must do prior learning modules before applying
 - Must meet experience, qualification, knowledge and skills requirements specific to class
- Deemed registration between 1 July and 31 December 2021
 - More information: [FAQ – What is deemed registration?](#)

Professional Engineers – who needs to register?

Professional engineers carrying out professional engineering on Class 2 buildings (or buildings that contain a Class 2 part) in the following areas of engineering are required to register under the D&BP Scheme:



Civil engineering



Geotechnical engineering



Electrical engineering



Mechanical engineering



Fire safety engineering



Structural engineering

From July 1, eligible **professional engineers** working on Class 2 buildings (or buildings that contain a Class 2 part) **must register** via the Service NSW portal. Following 7 July, you will need to stop doing professional engineering work until you have submitted your application.

Professional engineer must be an individual and not a company

More information: [Becoming registered to work on class 2 buildings](#)

Registration via the [Service NSW website](#)
will open from 1st July.

Design Practitioners



Each category of **Design Practitioner** is authorised to produce and provide compliance declarations for certain types of regulated designs. A construction project will require a range of registered design practitioners, each bringing a different specialty. It is important that you read the D&BP Regulations to understand the detail on each design practitioner category

Classes of Design Practitioner:

- design practitioner—architectural
- design practitioner—body corporate
- design practitioner—building design (low rise)
- design practitioner—building design (medium rise)
- design practitioner—civil engineering
- design practitioner—drainage
- design practitioner—drainage (restricted)
- design practitioner—electrical engineering
- design practitioner—façade
- design practitioner—fire safety engineering
- design practitioner—fire systems (detection and alarm systems)
- design practitioner—fire systems (fire hydrant and fire hose reel),
- design practitioner—fire systems (fire sprinkler)
- design practitioner—fire systems (mechanical smoke control)
- design practitioner—geotechnical engineering
- design practitioner—mechanical engineering
- design practitioner—structural engineering
- design practitioner—vertical transportation

Principal Design Practitioner



The **Principal Design Practitioner** is an **optional** role.

The role was designed with the bigger, more complex projects in mind. On those projects, hundreds or even thousands of regulated designs need to be lodged and declared. A principal design practitioner can assist in coordinating the many regulated designs declared designs that will need to be prepared and lodged prior to construction commencing.

- principal design practitioner—body corporate
- principal design practitioner—general

Building Practitioner



The **Building Practitioner** is the person who is the principal contractor for the building work. Where there is more than one builder on a project, the Building Practitioner must be the Head Contractor.

This role is responsible for making building compliance declarations – they declare that building work is constructed in accordance with declared regulated designs and the BCA.

How does the design compliance declaration scheme work?

Focus on Key Building Elements in Common Property



- Design practitioner signs off that designs (designs, plans, specifications or reports) comply with Building Code of Australia and any prescribed standards. Not drafts but those ready for construction.
- A certifier cannot issue a construction certificate or complying development certificate without these documents
- Building practitioner must lodge declared designs on NSW Planning Portal before beginning construction and then build in accordance with the designs.
- If a variation to these designs is needed, the Building Practitioner needs to have a varied regulated design prepared by a registered Design Practitioner before they commence building that variation.
- What needs to go into a regulated design is spelt out in guidance material on NSW Fair Trading website, including standard title block.

Variations

Key consideration: is the variation related to a key building element or a performance solution?



All variations related to a building element or performance solution will require an registered Design Practitioner to prepare and declare a new design.

Variations on regulated designs must be lodged on the NSW Planning Portal **within one day of the varied works commencing**, alongside the design compliance declaration form.
Work may need to stop so that the varied design can be prepared and declared within this timeframe.



Variations to an aspect of a regulated design **unrelated to a building element or performance solution** do not need to be signed off by a Design Practitioner but must be **recorded** by the Building Practitioner in a **variation statement**.

The **variation statement** will need to be **lodged prior to the application for an Occupation Certificate** and must not include any variations that are building elements or performance solutions (as these require the preparation and declaration of a new, updated design).



Key change

Variations must be lodged **within one day of the varied works commencing** if related to a key building element or performance solution. If the design cannot be updated, declared and uploaded in this time period building works may need to be paused.

More information: [Regulated designs and variations](#)

The *regulated designs*, compliance declarations and associated documents to be lodged in the NSW Planning Portal at the following stages:



Before building work commences

Documents lodged at this stage:

- a copy of each construction-issued regulated design for building work
- a copy of each design compliance declaration for regulated designs
- the principal compliance declaration (completed on Planning Portal) if appointed.

Building Practitioner must give the Principal Design Practitioner, if there is one, 14 days' written notice before building work starts.

This gives the Principal Design Practitioner time to collate and complete the principal compliance declaration.



After building work commences (i.e. variations)

Documents lodged at this stage:

- a copy of each varied regulated design
- a copy of the regulated design for a new building element or performance solution
- a copy of each design compliance declaration for the above designs.



Before you apply for an occupation certificate

Documents lodged at this stage:

- the building compliance declaration (completed on Planning Portal)
- a contractor document
- a copy of each variation statement required for building work
- a copy of any other regulated design that contains additional details not in the construction-issued regulated design, but are not variations
- a principal compliance declaration (completed on Planning Portal), if any.

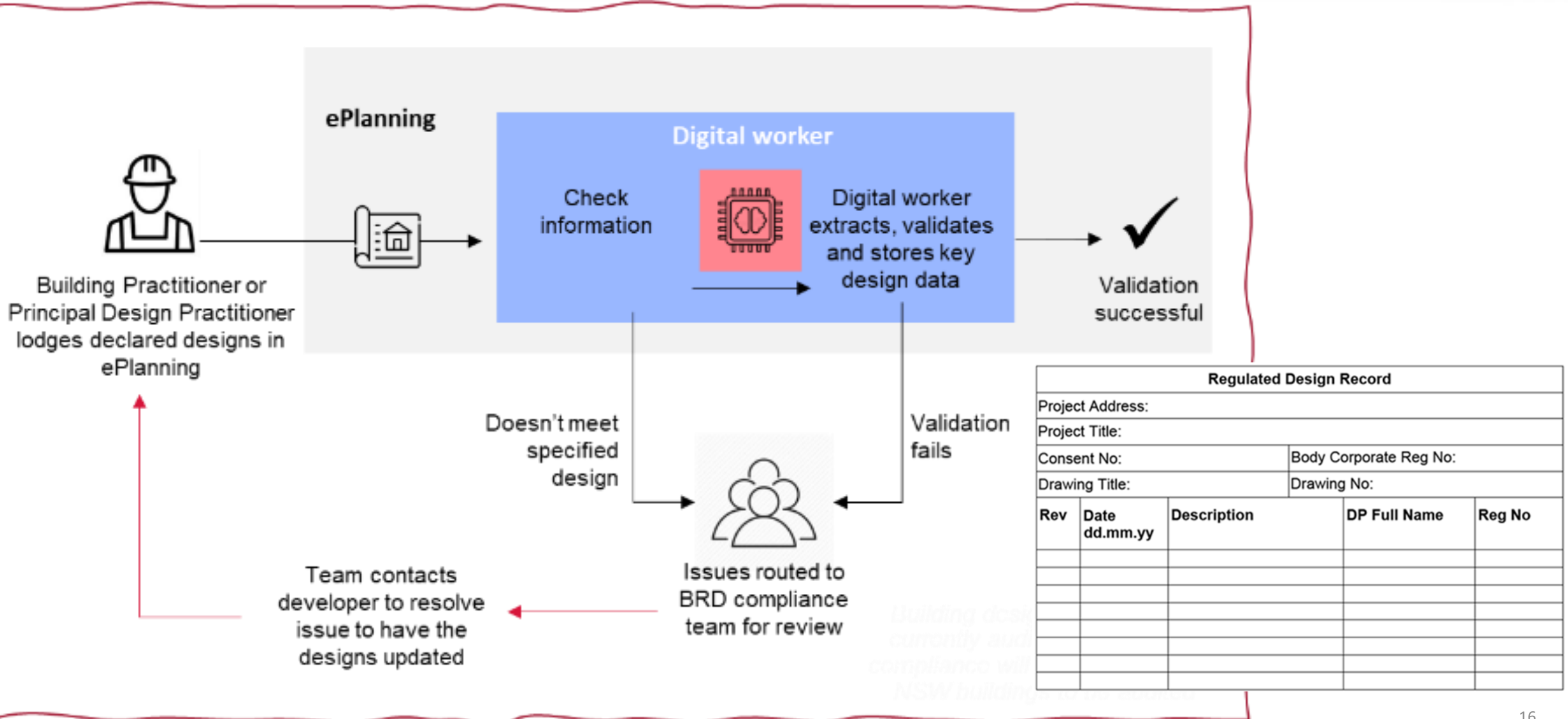


After the occupation certificate has been issued

Documents lodged at this stage: (if these documents have been varied from stage 3)

- a building compliance declaration
- a contractor document
- a copy of each variation statement required for building work
- a copy of any other regulated design that contains additional details not in the construction-issued regulated design, but are not variations
- a principal compliance declaration (completed on Planning Portal), if any.

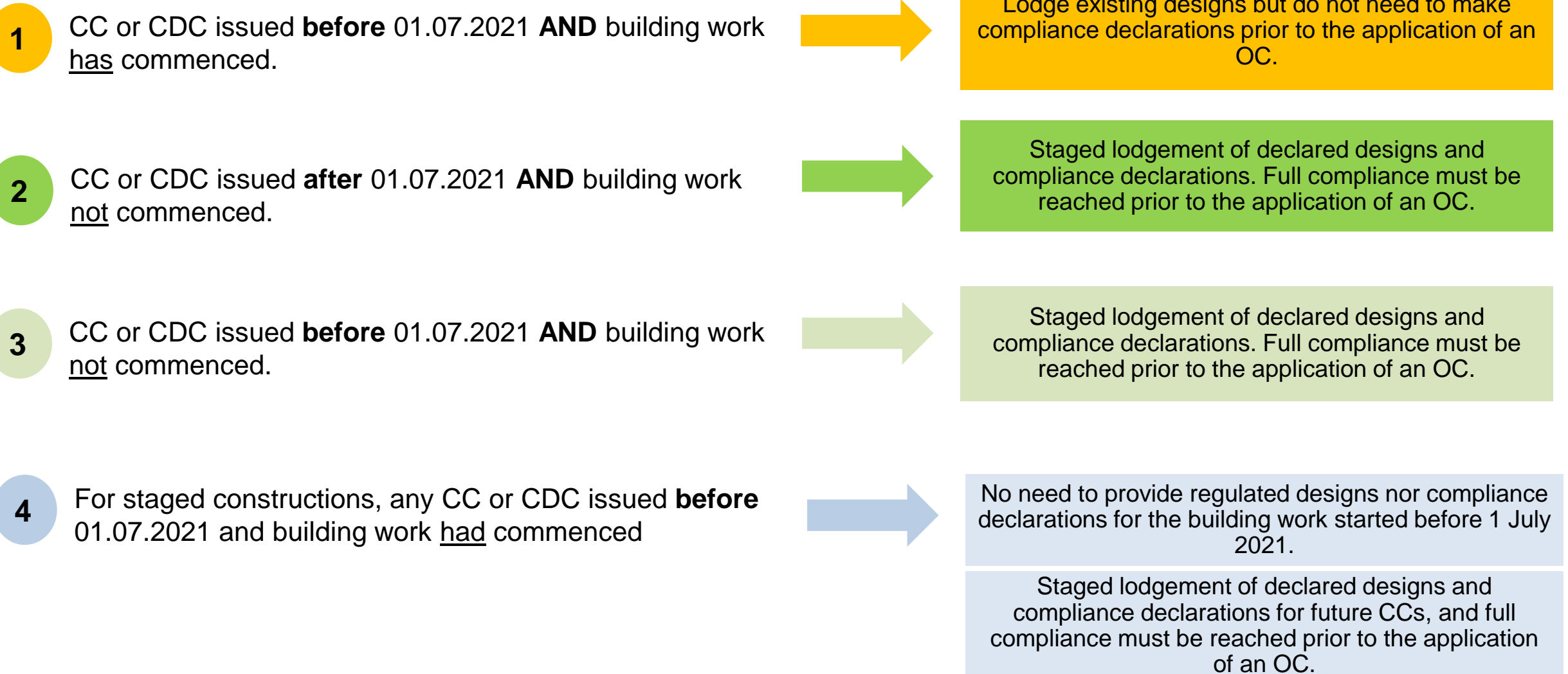
Declared designs will be audited – requirements in Ministerial Orders and Secretary Guidelines



Transitional arrangements you need to be aware of

- Deemed registration for practitioners (up to 31 December 2021)
- Insurance requirements (up to 30 June 2022)
- Lodgement of documents (up to 30 June 2022)

The CC/CDC issue date and whether building work has started determine whether projects are in/out



Other things to be aware of

- Code of Practice
- CPD
- Mandatory pre-registration courses

The bigger picture

- Obligations under other Acts remain unchanged – DBP builds on existing frameworks
- DBP is supported by RAB Act
- Certifiers subject to more regulatory oversight and clearer obligations:
 - Reforms to BDC Act (commenced 1 July 2020)
 - Four point plan to strengthen oversight
 - Certifiers Practice Standard
- Home Building Act is next on agenda

Questions

