

in this issue

Page 1

New enforcement powers and inspection requirements

Page 3

Recent Changes Affecting Certifiers and Councils

Page 7

Recent Decision of the Administrative Decisions Tribunal

Page 8

Practice Advice and Reminders

Page 10

News in Brief

NEW ENFORCEMENT POWERS AND INSPECTION REQUIREMENTS

A number of provisions of the *Environment Planning and Assessment Amendment Act 2008* were proclaimed on 6 February 2009, together with the gazettal of two new Regulations, the Building Professionals Amendment (Inspections and Penalty Notices) Regulation 2009 and the Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009.

The Department of Planning has prepared two Circulars: PS 09-002 *Commencement of provisions - new inspection requirements* and PS 09-003 *Commencement of provisions - enforcement matters*, issued 16 February 2009, which outline the provisions that commenced on 2 March 2009. The Circulars can be found at <http://www.planning.nsw.gov.au/planningsystem/practicenotes.asp>

The changes relate to certification matters, including the introduction of new mandatory critical stage inspections and new inspections prior to the issue of certain certificates, authorising certain persons to carry out these inspections and requiring certain records to be made of these new inspections. The new inspections include:

- prior to the issue of a complying development certificate (CDC),
- prior to the issue of a construction certificate (CC),
- prior to the issue of a strata certificate,
- a critical stage inspection for swimming pools, and
- a critical stage inspection for footings for class 2-9 buildings.

The Department of Lands recently released a Circular outlining requirements for inspections prior to issue of strata certificates, as part of these reforms. The Circular can be found at http://www.lands.nsw.gov.au/_media/lands/pdf/lpi_circulars/2009/2009-02_Changes_to_requirements_for_issue_of_strata_certificates.pdf.

Other changes relate to enforcement matters, including providing for the issue of new penalty notices, introducing a stop work order and prescribing conditions of development consents and complying development certificates in relation to proposed development involving certain excavation that affects adjoining premises.



Recent changes to Building Professionals Regulation and Accreditation Scheme

Changes to the Building Professionals Regulation 2007 (BP Regulation) and the accreditation scheme made under the *Building Professionals Act 2005* (BP Act), commenced on **20 March 2009**. The changes:

- Allow existing accredited certifiers to demonstrate only the core performance criteria in the scheme where those certifiers elect to continue with the conditions of accreditation that were placed on their certificate of accreditation when the BP Regulation commenced.
- Give accredited certifiers who held an accreditation on 1 March 2007 a further year to demonstrate the requirements of the accreditation scheme on renewal of their accreditation.
- Enable engineers registered in relevant categories on Engineers Australia's National Professional Engineers Register (NPER) to be deemed to meet the specialty performance criteria, specialty qualifications and specialty experience requirements of the accreditation scheme for corresponding categories of accreditation on an ongoing basis.
- Extend by one year the ability of accredited certifier engineers to undertake critical stage inspections on behalf of the principal certifying authority.
- Enable Category A2 and A3 building surveyor accredited certifiers to continue to undertake inspections of building work on behalf of the next 'highest' category of accreditation under their supervision and guidance on an ongoing basis.
- Rectify some inconsistencies in the authorities conferred on Category A2 and A3 certifiers as to the matters in relation to which these certifiers cannot issue compliance certificates.
- Make it clear that the accreditation scheme does not apply to accredited bodies corporate.
- Enable the Board to change the content and / or format of its accreditation exam at any time.
- Make minor amendments to the accreditation scheme by way of clarification.
- Make consequential amendments to the scheme as a result of the introduction of changes to the authorities conferred for categories of accreditation A1, A2, A3, B1 and D1 by Building Professionals Amendment (Inspections and Penalty Notices) Regulation 2009.

A circular that explains these changes is available at www.bpb.nsw.gov.au.

Update on accreditation of council building certifiers

Submissions on detailed proposals to introduce the accreditation of council officers and others who undertake the certification of building work on behalf of councils closed on 27 February 2009. The Board received 159 submissions, which are currently being analysed. Thank you to all individuals and organisations who took the time to provide comments on the proposals.

The Board also received 143 responses to its survey of council officers who are likely to seek accreditation to further inform the measures the Board will need to develop to facilitate the accreditation of officers.

RECENT CHANGES AFFECTING CERTIFIERS AND COUNCILS

Direction relating to section 94E of the *Environmental Planning and Assessment Act 1979*

In December 2008 the Government announced a number of reforms to the levies regime, including local government levies. The reforms aim to ensure developer levies are consistent with the Government's plan to boost housing supply and affordability.

As part of the implementation of these reforms, the Minister for Planning has issued a direction to all councils in New South Wales under s.94E of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Direction imposes a maximum amount for section 94 contributions for residential development. The Direction takes effect from 1 February 2009, although the maximum limit will not apply until 30 April 2009.

The Direction and a circular explaining to councils the effect of the Direction can be found at <http://www.planning.nsw.gov.au/planningsystem/practicenotes.asp>.

The Direction does **not** apply to accredited certifiers. However, the issue of the Direction may result in affected councils needing to amend their contributions plans. Accredited certifiers should therefore liaise with councils in the areas they currently work to ensure there have been no changes to applicable contributions plans, particularly as they relate to complying development.

It is envisaged that there will be very few circumstances in which accredited certifiers would be required to impose s.94 conditions on complying development certificates that exceed the maximum contribution rates referred to in the Direction (clause 3).

However, as part of monitoring the implementation of Government's reforms in this area, accredited certifiers are requested to notify the Department of Planning in the event you issue a complying development certificate which includes a condition requiring section 94 contributions that would otherwise exceed the maximum contribution rates set out in the Direction. Such notification should include details of the contributions plans relied upon for the imposition of the relevant s.94 contribution condition.

Notifications can be provided to the Building Professionals Board, who will in turn advise the relevant staff within the Department of Planning.

Commencement of new Housing Code

The launch of the NSW Housing Code by Planning Minister Kristina Keneally on 12 December 2008, coinciding with the gazettal of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, began a busy period leading up to the commencement of the code on 27 February 2009.

The code outlines how residential developments, including detached single and double storey dwellings, home extensions and other ancillary development can proceed on lots of greater than 450m² as complying development with council or accredited certifier approval. It also outlines how 40 types of minor developments around the home can proceed as exempt development without development consent.

The Department has released Planning Circulars outlining these provisions: PS 09-004 *SEPP (Exempt and Complying Development Codes) 2008*, available at http://www.planning.nsw.gov.au/planningsystem/pdf/ps09_004_sepp_codes_withatts.pdf.

The Department of Planning's NSW Housing Code team travelled the state, conducting 11 implementation workshops as far as Ballina in the North to Wagga in the South.

Each workshop was made up of four sessions, one each for council planners, council customer service staff, planning professionals and members of the public. The interest in the code was highlighted by the response, which saw four

additional workshops held and a total attendance of more than 5,000 participants. Excerpts from the presentation can be viewed at http://www.planning.nsw.gov.au/planning_reforms/housing_code_video.asp.

As expected, consultation with practitioners at all levels saw a number of amendments made to the SEPP, covering areas as diverse as the Siding Spring Observatory 'dark skies' provisions, revised definitions of building heights, clarifications regarding the removal of trees and the inclusion of insulation as exempt development.

Councils are negotiating local exemptions and exclusions, as laid out in the code, with a target of mid-2009 for gazettal. The Department will continue to issue Practice Notes, Circulars and other information regularly.

With the introduction of the SEPP covering detached dwellings on lots of 450m² and greater, the Department's attention is now turning to extending the NSW Housing Code to cover rural areas, attached dwellings and smaller blocks. Also planned are exempt and complying development codes for commercial, industrial and retail development.

A range of other materials (the code, a guide to complying development for detached housing and a range of fact sheets about the code) also assist practitioners and the community to find out more information, available at http://www.planning.nsw.gov.au/planning_reforms/housing_code.asp.

Further information about the NSW Housing Code will be updated on the Department's website at http://www.planning.nsw.gov.au/planning_reforms/housing_code.asp over time as part of an education and training program to provide planning and building professionals, councils and the public with the information they need to understand and implement the code.

If you have any questions, or require copies of the Information Pack, please call the Department of Planning's Information Centre on 1300 305 695 or 02 9228 6333 or via email planningreform@planning.nsw.gov.au.

To receive regular updates about the code, subscribe to enews@planning.nsw.gov.au.



Department of Planning presenters Aoife Wynter and Chris Summers at NSW Housing Code implementation workshop in Liverpool, 4 February 2009

Other amendments relating to complying development

Further provisions of the *Environmental Planning and Assessment Amendment Act 2008* (Amendment Act), as well as the *Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009* (Amendment Regulation), also **commenced operation on 27 February 2009**.

The Amendment Act and Amendment Regulation support the new framework for complying development introduced by State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

In summary, the Amendment Act and Amendment Regulation:

- Provide that the lodgement with, or receipt by, a council or accredited certifier of an application for a complying development certificate (CDC) is no longer required to be notified to adjoining landowners or other persons.
- Require applications for CDCs to be determined within 10 days.
- Introduce additional information that must be included in an application for a CDC.
- Require the council or accredited certifier to cause written notice of a determination to issue a CDC (in the form approved by the Director-General) to be given to the owner or occupier of any land within 40 metres of any boundary of the land to which the certificate relates within two days after the date of determination.
- Require additional information to be recorded on CDCs.
- Enable a section 149(2) planning certificate to identify only whether or not the land to which the certificate relates is land on which no complying development may be carried out under the new SEPP; and, if no complying development may be carried out on that land under the new SEPP, the reason why.

The changes are explained in Department of Planning Circular PS 09-005, *Commencement of certain provisions of EP&A Amendment Act 2008 and EP&A Amendment (Complying Development) Regulation 2009*, available at http://www.planning.nsw.gov.au/planningsystem/pdf/ps09_005_planreform_commencement5_complying_dev.pdf.

Notifying councils of complying development certificate determinations

Accredited certifiers are required to supply information on the determination of complying development certificates to the relevant council. This requirement is part of the process for notifying determinations of complying development certificates under section 85A of the EP&A Act.

Under clause 130(4) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg), accredited certifiers must forward to the relevant council within 2 days after the determination of a complying development application:

- copies of the determination,
- the application to which the determination relates (including the endorsed date of receipt of the application required under clause 126(2) of the EP&A Reg),
- any endorsed plans, specifications or other documents that were lodged with the application,
- any additional information provided by the applicant as required by the certifier under clause 127 of the Regulation, and
- any complying development certificate issued together with any associated fire safety schedule or fire link conversion schedule.

It is important that certifiers supply complete information to the council promptly after determination. The information supplied under clause 130(4) is a key source of information for the Department of Planning to monitor the uptake of complying development and the implementation of the NSW Housing Code which commenced on 27 February 2009.

Similarly, councils have been asked to supply information on complying development dealt with by councils and accredited certifiers as part of the reporting councils undertake for the Department's Local Development Performance Monitoring Program.

The information certifiers supply to councils also allows councils to keep the register of complying development applications required under clause 265 of the EP&A Reg. The register is available for public inspection and must contain certain information on each application for a complying development certificate whether or not the certificate is issued by council or by an accredited certifier.

A range of other materials (the code, a guide to complying development for detached housing and a range of fact sheets about the code) also assist practitioners and the community to find out more information, available at http://www.planning.nsw.gov.au/planning_reforms/housing_code.asp.

Further information about the NSW Housing Code will be updated on the Department's website at http://www.planning.nsw.gov.au/planning_reforms/housing_code.asp over time as part of an education and training program to provide planning and building professionals, councils and the public with the information they need to understand and implement the code.

If you have any questions, or require copies of the Information Pack, please call the Department of Planning's Information Centre on 1300 305 695 or 02 9228 6333 or via email planningreform@planning.nsw.gov.au.

To receive regular updates about the code, subscribe to enews@planning.nsw.gov.au.

Continuing professional development

Accredited Certifiers: Legislative Requirements 2008

All accredited certifiers should have submitted their completed worksheets for this course to the Board by 6 February 2009. The worksheets have been marked and the certificates posted to certifiers.

If you have not completed the course, or have not received your certificate, please contact the Board immediately on 02 9895 5950.

Accredited Certifiers: Professional Practice 2009

For the first continuing professional development course that is required for 2009, all accredited certifiers will be asked to complete training on ethics in relation to their role as certifiers. The Board is currently working with approved training providers to develop the course. The course is expected to be one day in length and will be available to be undertaken by certifiers during May 2009.

All certifiers will be notified shortly about the dates for the course as the details become available.

Accredited Certifiers: Legislative Requirements 2009

Accredited certifiers will also be required to undertake a course later in 2009 on the legislative changes that are due to be introduced to the EP&A Act and the BP Act over the coming months. These changes will include new enforcement powers for councils and accredited certifiers, new obligations on certifiers and new critical stage inspections. It is expected that this training will be available from August 2009.

RECENT DECISION OF THE ADMINISTRATIVE DECISIONS TRIBUNAL (ADT)

Public expectations of accredited certifiers

In January 2009, the ADT delivered a decision emphasising the nature and role performed by accredited certifiers, together with the expectations that members of the public are entitled to hold of them in the discharge of their functions as accredited certifiers whilst performing such an important public function.

The case involved an application by a former accredited certifier to the ADT for the review of an earlier decision made by the Board to cancel his certificate of accreditation. In cancelling his certificate of accreditation and opposing the application for review, the Board relied upon the former certifier's deceptive and improper conduct to establish that he was not a fit and proper person to hold a certificate of accreditation.

The ADT observed that the case "squarely raises issues of integrity of conduct" and then stated, at paragraph 60 of its Reasons for Decision, that:

"Accredited certifiers hold a position of public trust requiring independent judgement to be exercised about such critical matters as whether a developer's building plans are consistent with the development consent, and whether the building as constructed has remained consistent. He or she is a judge as to critical stages of the building works. They must have the ability to bring an informed and detailed technical understanding to their assessment tasks. They must be sufficiently robust to ensure that a developer or builder fall in line, and make changes where non-compliance is detected. They must be prepared to refuse a certificate if appropriate. When they have multi-faceted building services business..., there may be a real tension between their role as an independent umpire and their desire to retain the applicant for the certificate as a client in other parts of the business."

The ADT determined that the evidence showed a "profound lack of judgement" on the part of the former accredited certifier by allowing himself "to be used in a scheme to overcome a fundamental omission in circumstances that led him to engage in a series of deceptions and non-disclosures..."

The ADT also agreed that "there was a pattern of behaviour extending over several months that was inconsistent with the standards that would be expected of a person holding an office of public trust in relation to the building and development process".

Finally, the ADT concluded that the former accredited certifier's "failures of integrity were very serious ones" and stated:

"...we do not think that a fair-minded member of the public with an understanding of the role of an accredited certifier would conclude that [he] is a fit and proper person to remain an accredited certifier. The object of public protection would be best served by not allowing [him] to continue as an accredited certifier."

Accordingly, the ADT affirmed the Board's decision to cancel the former accredited certifier's certificate of accreditation, to take effect immediately.

A complete copy of the Reasons for Decision published by the ADT in this matter can be accessed at:

<http://www.lawlink.nsw.gov.au/adtjudgments/2009nswadt.nsf/1410fb8ca7f756c5ca25684e0041e60e/2e43d835afa575c2ca25753900027aba?OpenDocument>

PRACTICE ADVICE AND REMINDERS

Quality of plans for the issue of Part 4A and complying development certificates

Accredited certifiers are reminded of the requirements of the EP&A Reg in relation to the quality of plans and specifications they accept when considering an application for a Part 4A or complying development certificate (CDC). Plans and specifications for class 1 and 10 buildings are most susceptible to non-compliance with those requirements, particularly where they are hand-drawn by the applicant.

Where plans are not clear, certifiers may advise their clients how to alter plans in order that they show correct or sufficient detail to enable a certificate to be issued, but only in relation to class 1 and 10 buildings. The BP Act and the Building Professionals Regulation 2007 (BP Regulation) prevents certifying from providing such advice for class 2-9 buildings.

The effect of sections 66 and 67 of the BP Act and clauses 17 and 18 of the BP Regulation is that certifiers may not assist in the preparation of plans or specifications for an aspect of development for class 2-9 buildings and then go on to issue a Part 4A or complying development certificate for that aspect of development.

What is a certifier prevented from doing in relation to class 2-9 buildings?

Certifiers may not make markings on the plans or specifications, other than the required endorsement to indicate determination of the certificate under clause 130(3) of the EP&A Regulation for CDCs and clause 142 (3) of the EP&A Regulation for construction certificates. Endorsement may typically include a stamp with the certifier's name, signature, date of determination and certificate number, together with a statement that the plans meet the requirements for complying development or for the issue of a construction certificate.

A certifier could be considered to have a conflict of interest if the certifier contributes in any other way to drawing or writing on the plans.

Certifiers should also avoid deleting a marking on a plan. For example, where a client decides not to proceed with a deck shown on the plans, the plan should be returned to the applicant for alteration and accepted only in its final form, with all the necessary detail clearly shown.

What should plans and specifications show?

For all classes of buildings, plans and specifications for the issue of CDCs and construction certificates must be clear and comply with Parts 2 and 3 of Schedule 1 of the EP&A Regulation. The requirements include the provision of detailed block and general plans, drawn to a suitable scale (and showing a north point), a plan of each floor section and of each elevation of the building and floor/ground levels. Levels must be shown of the lowest floor and of any yard or unbuilt area belonging to that floor and the levels of the adjacent ground.

Plans must also show the height, design, construction and any relevant provision for fire safety and fire resistance. Where development involves building work to alter, expand or rebuild an existing building, a scaled plan of the existing building needs to be included. Similarly, relevant BASIX requirements need to be included in the plans.

The EP&A Regulation specifies minimum requirements and plans need to reflect conditions on site that may impact upon the development. Encumbrances and easements should be shown where they have the potential to impact or impede a development or access to a development.

Whilst it is recognised that it was previously a long-standing practice for building surveyors to mark plans in order that a certificate could be issued, this practice is unacceptable in relation to carrying out certification work for class 2-9 buildings under the EP&A Act and strata schemes legislation, as it could compromise a certifier's independence with respect to their certifying authority role.

Considerations when issuing complying development certificates

Complying development is generally small scale development that complies with standards set by an environmental planning instrument (including Development Control Plans (DCPs)).

Complying development requires approval from a certifying authority, which can be either the local council or an accredited certifier, in order to proceed.

An accredited certifier who issues a CDC should have thorough knowledge of the relevant legislation and the applicable planning standards. These standards may be specified by council's Local Environment Plan (LEP), DCP, any other documents referred in the LEP/DCP or the government's new Housing Code SEPP, as relevant. It is the responsibility of the certifying authority to ensure that it has knowledge of the relevant requirements if it intends to determine an application for a CDC.

The Board receives a number of complaints each year about the issue of CDCs. The most common issues raised are:

- The CDC not complying with the relevant planning instrument (LEP/DCP).
- The certifier not relying upon the current version of the LEP/DCP in determining the application.
- The certifier relying on local knowledge and not reading the LEP/DCP and the documents referenced, such as bush fire prone land maps, flooding maps and coastal process studies.
- The certifier failing to obtain information to satisfy themselves about the zoning of the property.
- The certifier failing to read in full a document upon which they are relying (such as a section 149 zoning certificate).
- The certifier relying upon poor quality plans so that the compliance of the development with the relevant planning instrument cannot be ascertained (eg where the plans do not indicate any proposed level of the land or any finished floor levels).
- The certifier accepting poor quality plans as part of the application for a CDC and imposing conditions on the CDC to rectify the deficiencies.
- The certifier issuing a CDC without the council's required conditions and/or the certifier imposing their own conditions on the CDC.

There can be serious implications where a CDC is wrongly issued. The Board has previously given advice, in Issue 13 (available at http://www.bpb.nsw.gov.au/resources/229/BPB_issue13.pdf), in relation to when complying development can be carried out. When determining complaints in relation to issuing CDCs, the Board can impose various penalties, including issuing fines and imposing conditions on the accreditation of the certifier, such as by removing their ability to issue CDCs.

It is therefore important for certifying authorities to establish proper procedures to ensure that applications for CDCs are assessed and determined appropriately.

To assist certifying authorities, the Board is currently preparing standard application forms and determination notices for complying development together with a checklist covering the new requirements of the Housing Code SEPP. It is anticipated that the forms and checklists will be available in April 2009.

Compliance with the BCA (EP 1.5 and section E1.9) in relation to fire protection

Firefighters involved in emergency operations within buildings under construction are not always afforded the protection that may exist in completed buildings, such as from fire and smoke separation, smoke exhaust and sprinkler suppression. The Fire Brigades is keen to achieve compliance with the requirements of the Building Code of Australia (BCA) in relation to fire protection during building construction so as to ensure the health and safety of the building occupants and its officers while attending an incident.

Firefighters were recently called to a fire in a building under construction. On arrival, they observed smoke and flames issuing from the uppermost level of an eight storey building; a large amount of timber was alight.

Before the Brigades arrived, nearing the completion of a shift one of the workers on the site noticed from the ground level a small fire on the top level. Attempts by a supervisor to extinguish the fire with a portable extinguisher, and then a garden hose, were not successful as the fire continued to grow.

Firefighters were unable to find internal fire hydrants, requiring them to source street hydrants from a considerable distance away. In all, a delay of approximately 20 minutes was experienced while firefighters located hydrants, connected their pumper, and ran lines of hose up the fire stairs. An aerial ladder platform (cherry-picker-type apparatus) was also used at the incident. The fire spread from the top level to some lower levels, making fireground operations even more difficult.

The incident took approximately three hours to normalise and included 10 crews, each consisting of four firefighters.

What can builders and certifying authorities do to assist in avoiding / tempering this result?

Certifying authorities are asked to consider performance requirement EP 1.5 and section E 1.9 of the BCA in relation to buildings under construction. The Fire Brigades advise that the above incident would not have escalated to the degree that it did if these requirements had been met during construction of the relevant building. These requirements are as follows:

EP 1.5 - Suitable means of fire-fighting must be installed to the degree necessary in a building under construction to allow initial fire attack by construction workers and for the fire brigade to undertake attack on the fire appropriate to:

- (a) the fire hazard, and
- (b) the height the building has reached during its construction.

E 1.9 - In a building under construction –

- (a) not less than one fire extinguisher to suit Class A, B and C fires and electrical fires must be provided at all times on each storey adjacent to each required exit or temporary exit or stairway; and
- (b) after the building has reached an effective height of 12 metres –
 - (i) the required fire hydrants and fire hose reels must be operational in at least every storey that is covered by the roof or the floor structure above, except for the two uppermost storeys; and
 - (ii) any required booster connections must be installed.

NEWS IN BRIEF

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 ('the Infrastructure SEPP') commenced on 1 January 2008. The Infrastructure SEPP simplifies the process for providing important infrastructure such as hospitals, schools, railways, roads, power and water supplies.

The Infrastructure SEPP has specific planning provisions and development controls for 25 types of infrastructure works or facilities and outlines the planning rules for these works and facilities.

A general planning circular (PS 08_001) which outlines the provisions of the Infrastructure SEPP is available at: http://www.planning.nsw.gov.au/planningsystem/pdf/ps08_001_sepp_infrastructure.pdf

A community guide to the Infrastructure SEPP is available at: http://www.planning.nsw.gov.au/planningsystem/pdf/dop08_005_infra_sepp_communityguide.pdf

Amendments to the Infrastructure SEPP to allow educational establishments

On 20 February 2009 the Infrastructure SEPP was amended to provide consistency for government and non-government schools in relation to the permissibility of development. The amendments to the provisions for schools and TAFE establishments will ensure that the planning system supports the Commonwealth incentives package proposed to fund additional infrastructure at government and non-government schools and TAFE establishments.

Developing a new school

Under the amended Infrastructure SEPP the development of a school or a facility forming part of a school is now permissible with consent on most land regardless of whether or not the land is within the boundaries of an existing school. Previously any new development had to be within the boundaries of an existing school or on land adjacent to an existing school.

This provision will be reviewed in three years. Clause 32 of the Infrastructure SEPP specifies that the consent authority must take into consideration relevant NSW Government School Facilities Standards for landscape, design and specification. The provisions in these standards prevail over any development control plan.

Alterations to an existing school

Certain alterations to an existing school under the Infrastructure SEPP do not require a development application to be submitted to council. The alterations may either be exempt development or complying development which will require a CDC.

Exempt development

Clause 31 of the Infrastructure SEPP lists the development that is exempt development if it is in connection with an existing school and complies with clause 20(2) of the Infrastructure SEPP.

Complying development

The provision of Clause 31A of the Infrastructure SEPP will assist schools undertaking construction, alterations or additions at existing establishments under the Commonwealth incentives package by making them complying development, these categories include:

- libraries or administration buildings,
- gymnasiums, indoor sporting facilities or halls,
- classrooms, lecture theatres, laboratories or training facilities,
- tuckshops, cafeterias, bookshops or childcare facilities for students or staff (or both), and
- car parking facilities.

Clause 31A(2) of the Infrastructure SEPP contains specific requirements for complying development, noting that section 76A of the EP&A Act also provides circumstances where complying development cannot be undertaken.

For more information on the Infrastructure SEPP amendment, refer to Planning Circular PS 09–007 issued on 2 March 2009: http://www.planning.nsw.gov.au/planningsystem/pdf/ps09_007_sepp_infrastructure_amendment.pdf

Important upgrades to BASIX

The Department of Planning will implement a series of upgrades to the BASIX on-line tool in the week commencing Saturday 28 March 2009. The upgrade will include:

- changes to accept 2nd generation Thermal Simulation Software within the Thermal Comfort section of the BASIX tool (this will include AccuRate, BERS Pro, and FirstRate 5 simulation software);
- new questions and commitments about the construction of floors and in-slab heating systems when the Simulation Thermal Comfort method is used (single and multi projects);
- removing cross ventilation from the Single Dwelling DIY Thermal Comfort method and increasing the insulation requirements to be in line with BCA requirements;
- removing “solar electric plus timer” as an option under hot water systems, as it is effectively covered by selecting “solar electric”;
- requiring a scheme name to be selected for reticulated recycled water. This name will also be listed on certificates, making the verification process easier for councils and certifiers; and,
- requesting the Development Application or CDC lodgement date for BASIX projects that are being revised, and showing this on the new BASIX Certificate.

Please be aware that some of these changes will result in changes to the information contained on BASIX certificates. Further details of the proposed changes will be provided as they are finalised at www.basix.nsw.gov.au.

The Department of Planning has also advised that there will be disruptions to the BASIX website from COB Friday 20 March 2009 as the changes are implemented.

For any queries regarding the changes, please contact the BASIX help line at basix@planning.nsw.gov.au. You can also sign up for updates by subscribing to the BASIX newsletter at www.basix.nsw.gov.au.

Removal of POPE licences under section 68 of the *Local Government Act 1993*

From 26 October 2007, the regulation of the use of buildings or temporary structures as a place of public entertainment (POPE) was transferred from the *Local Government Act 1993* (LG Act) to the EP&A Act. Previously, the use of a POPE required both a development consent under the EP&A Act and an approval under the LG Act.

Despite this amendment, some councils have been continuing to advise restaurant, bar and pub operators that POPE licences are required under the LG Act and continue to have application forms for POPE licences under the LG Act on their websites. This situation only applies to applications lodged before 26 October 2007.

The Department of Planning has requested councils to review their public information systems, in particular the information displayed on their website regarding entertainment venues, and to remove any references that indicate that the former system is still in operation.

The use of a POPE that is the subject of an existing POPE licence, ie. granted before 26 October 2007, continues despite the LG Act provisions under which the licence was granted being repealed. The conditions applying to existing approvals are preserved until 26 October 2009 under savings and transitional provisions in the EP&A Act. Arrangements for operation after 26 October 2009 are under review.

For further information, see Department of Planning Circular PS 08–012, *Entertainment in pubs, bars, cafes and restaurants*, available at <http://www.planning.nsw.gov.au/planningsystem/practicenotes.asp>

If you have further enquiries, please phone the Department of Planning's Information Centre on 02 9228 6333 or email information@planning.nsw.gov.au.

New charges for Final Fire Safety Report

In accordance with Part 6, Clause 54 of the Fire Brigades Regulation 2008, NSW Fire Brigades (NSW FB) will now be charging for a Final Fire Safety Report for inspection of premises. The new charges that commenced on 2 February 2009 and apply to all inspections, are as follows:

- Initial Inspection (up to 2 hours including travel time to and from the inspection) is **\$215**.
- Re-inspection (up to 2 hours including travel time to and from the inspection) is **\$430**.
- For each additional hour (or part of) is **\$200**.

Further, an assessment of each individual Category 2 fire safety provision inspected by the NSWFB will be charged at **\$180**.

If you wish to apply for a Final Fire Safety Report, the application forms are available at: <http://www.fire.nsw.gov.au/page.php?id=762>. Complete the form on-line and email it to firesafety.nswfb@fire.nsw.gov.au.

BCA 2009 information seminars

The Department of Planning recently issued a circular to advise councils, accredited certifiers, relevant government agencies and industry groups of upcoming seminars on the BCA 2009, which is due to take effect on 1 May 2009. The seminars are being held during February and March 2009.

The circular (BS 08-003) is available at <http://www.planning.nsw.gov.au/planningsystem/brans.asp>

Accreditation exam dates

The Board's accreditation exam will be held in Parramatta on the following dates:

- 6 May 2009
- 17 June 2009
- 29 July 2009
- 9 September 2009
- 21 October 2009
- 2 December 2009

To register to undertake the exam, please call the Board on 02 9895 5950. If you are located in a regional area or interstate and would like to undertake the exam closer to your location, please contact the Board to discuss your options.

Subscribing to the BPBulletin

To receive future issues of the BPBulletin, please email: bpb@bpb.nsw.gov.au

Contacting the BPB

The Building Professionals Board is located at:
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Important note

This bulletin does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this bulletin.

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March 2009

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in this issue

Page 1

Accreditation of Council Building Certifiers

Page 2

Recent changes affecting certifiers and councils

Page 3

Practice advice and reminders

Page 6

News in brief

ACCREDITATION OF COUNCIL BUILDING CERTIFIERS

Earlier this year the Building Professionals Board (the Board) exhibited proposed changes to the Building Professionals Regulation 2007 and the accreditation scheme made under the *Building Professionals Act 2005* (BP Act) to introduce the individual accreditation of council building certifiers. The proposals were exhibited from 18 November 2008 until 27 February 2009. At the conclusion of the exhibition period, a significant number of submissions had been received.

Throughout November and December last year, staff of the Board conducted a total of 16 information sessions around the state to explain the proposals and to enable council officers to ask questions and raise issues with the proposals. A summary of the issues that arose from these sessions is available at

<http://www.bpb.nsw.gov.au/resources/265/Council%20info%20sessions%20-%20Info%20sheet%2017%20-%20Dec%2008.pdf>

In response to the issues that were raised both at the information sessions and in the submissions received, the Minister has decided to delay the commencement of provisions requiring the accreditation of council officers to enable the Board to undertake further consultation with councils and other key industry stakeholders.

Amendments to the evidence checklists for categories A1, A2, and A3

The Board has recently conducted a review of the building surveying qualifications delivered by course providers throughout Australia. The purpose of the review was to provide greater recognition to the building surveying qualifications for categories A1 – Accredited certifier – building surveyor grade 1 (A1), A2 – Accredited certifier – building surveyor grade 2 (A2) and A3 – Accredited certifier – building surveyor grade 3 (A3).

Revised evidence checklists for categories A1, A2 and A3 were approved by the Board on 20 April 2009 and are available on the Board's website (www.bpb.nsw.gov.au).

An applicant seeking accreditation in categories A1, A2 or A3 who has a qualification listed under the relevant revised evidence checklist, will be taken to satisfy all of the specialty performance criteria for the relevant category and will not be required to submit an annotated performance criteria report with an application for accreditation made to the Board.

The change also applies to existing certifiers who elect to be assessed against the requirements of the accreditation scheme at their third renewal or are required to be assessed against the scheme with their fourth renewal.

If an existing certifier chooses to seek unconditional accreditation, and has one of the listed qualifications in the relevant checklist for categories A1, A2 or A3, the applicant will not be required to submit an annotated performance criteria report. Existing accredited certifiers however will be required to demonstrate that they satisfy all other criteria, including the core performance criteria.

Existing accredited certifiers have the choice of retaining their conditions and only being assessed against the core performance criteria or electing to be assessed against all criteria of the accreditation scheme.



RECENT CHANGES AFFECTING CERTIFIERS AND COUNCILS

Proposed amendments to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the "Codes SEPP") commenced on 27 February 2009 and makes provision for an Exempt Development Code and a series of Complying Development Codes.

The first stage of the Codes SEPP introduced a State-wide complying development code which applies to single and two-storey dwelling houses on lots 450m² or greater. It also contains 40 development types which are exempt development.

The next amendment to the Codes SEPP is the addition of the NSW Commercial and Industrial Code, which is being progressed in stages. The first stage of the NSW Commercial and Industrial Code will make the following development types complying development:

- certain changes of use to certain commercial and industrial buildings,
- demolition and internal fit-outs of certain commercial and industrial buildings, and
- some minor external alterations to certain commercial and industrial buildings.

A number of additional exempt development types relating to commercial and industrial development will also be added to the Codes SEPP.

In concert with the commencement of the NSW Commercial and Industrial Code, amendments to the NSW Housing Code and exempt development code will be made. It is anticipated that these amendments to the Codes SEPP will occur mid-July 2009.

The Department of Planning will be conducting a number of workshops to support the implementation of the NSW Commercial and Industrial Code during late July and early August, 2009. Details of these workshops will be available on the Department's website once the arrangements have been finalised.

The second stage of the NSW Commercial and Industrial Code will expand the range of exempt development types and complying development types for commercial and industrial development. The Department will also be expanding the NSW Housing Code to include lots smaller than 450m², attached housing and rural housing. These amendments will be made late 2009 / early 2010.

More details will be provided in upcoming additions of the Bulletin once they become available.

Post-determination notification for complying development

The Department of Planning issued a Circular on 17 April 2009, *PS 09-012 Complying development – changes to Conveyancing Regulation, and guide to post-determination notification*, which provides details relating to the changes to the Conveyancing (Sale of Land) Regulation 2005. The Circular also provides guidance with respect to post-determination notification requirements for complying development. The Department of Planning also issued a Circular on 3 June 2009, *PS 09-013 Complying development – changes to post-determination notification*

Changes relating to the Conveyancing (Sale of Land) Regulation 2005

Clause 279 and Schedule 4 of the Environmental Planning and Assessment Regulation 2000 (EP&A Reg) prescribe the matters to be contained within a Section 149 (2) certificate. Clause 279(2) was recently inserted into the Regulation allowing for a 149 (2) certificate to be issued containing only information set out in clause 3 of Schedule 4. That is, it allowed for the issuing of a 149 (2) certificate that only identifies:

- (i) Whether or not a complying development may be carried out on the land under the Codes SEPP, and
- (ii) If not permitted to be carried out, the reason why complying development may not be carried out on that land

In response to the above changes to the Regulation, the Conveyancing (Sale of Land) Regulation 2005 has been amended by the Conveyancing (Sale of Land) Amendment (Planning Certificates) Regulation 2009 to make clear that this 'limited' form of a section 149 (2) certificate is not a section 149 certificate that can be attached to a contract for the sale of land (or an option to purchase residential property).

Guide relating to the notification of complying development

The Department of Planning issued a Circular on 3 June 2009, *PS 09-013 Complying development – changes to post-determination notification*, which removes the requirement for a notice to be given to the owner or occupier of the land (in the case of advising the issuing of a complying development certificate) in circumstances where there is not a dwelling situated on that land. The purpose of the amendment is to overcome some of the practical difficulties councils and accredited certifiers are currently facing in attempting to satisfy the requirements of clause 130(5) where the adjoining land is vacant.

Clause 130(5) of the EP&A Reg requires the council or the accredited certifier to provide written notice of a determination to issue a complying development certificate to the owner or occupier of any land within 40 metres of any boundary of the land to which the certificate relates. The notice is to be in the form approved by the Director-General of the Department of Planning and is to be given within two days of the determination to issue the complying development certificate. This form is available at www.planning.nsw.gov.au/housingcode.

The Circulars are available at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

PRACTICE ADVICE AND REMINDERS

Safety barriers in aboveground car parks

The Department of Planning issued a Circular on 10 June 2009, *BS 09-003 Safety barriers in aboveground car parks – coroner's recommendations*, which advises consent authorities of the steps to be taken to ensure that pedestrian and vehicular safety barriers in car parks built before 1989 are inspected and any defects remedied where proven to be necessary.

The Circular is available at <http://www.planning.nsw.gov.au/planningsystem/practicenotes.asp>

Occupation certificates – “suitable for occupation” test

Accredited certifiers are reminded, when issuing interim and final occupation certificates, of their obligations under Section 109H of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and in particular section 109H (3)(c), (4)(b), (5)(c), and (6)(b) which prohibit the issue of occupation certificates where a building or part of a building is not “suitable for occupation or use in accordance with its classification under the Building Code of Australia”.

The Board was recently made aware of a situation where:

- Development consent was granted for the demolition of an existing dwelling and construction of a new dwelling.
- An existing pool within the rear yard was shown on the development consent plans as being retained.
- In constructing the new dwelling it was necessary for the existing pool fencing to be demolished / removed.
- The development consent conditions do not make any mention of pool fencing with the council confining the conditions to those relating to the new dwelling.
- An occupation certificate was issued for the new dwelling despite the pool fencing not being replaced / provided.

It is the Board's view that an occupation certificate should not have been issued in the above circumstances as the building was not “suitable for occupation” having regard to the absence of pool fencing.

Certifying authorities need to take a broad view and have regard to all site conditions in determining whether a building is suitable for occupation. The absence of pool fencing presented a clear and obvious danger to the occupiers of the site.

Clause 143B of the EP&A Regulation 2000 – Restriction on issue of certain construction certificates without inspection

In a previous edition of the Bulletin we advised of the recent amendments to the EP&A Reg which had the effect of introducing new enforcement powers and inspection requirements. Amongst a raft of new inspection requirements, the amendment had the effect of requiring, in certain circumstances, a certifying authority to carry out an inspection of the existing buildings on a site prior to the issue of a construction certificate.

Clause 143B of the EP&A Reg reads as follows:

A certifying authority must not issue a construction certificate for development on a site which affects an existing building unless a council, a consent authority or an accredited certifier has carried out an inspection of the building.

The Board has received an enquiry as to what constitutes "... affects an existing building ..." as provided in clause 143B.

There are many circumstances where existing rural and residential site buildings, e.g. sheds, carports, garages and decks, in addition to existing commercial and industrial site buildings such as shops, offices and amenities facilities could be affected by a development. The term "... affects an existing building..." should therefore be widely interpreted.

Whilst it is not possible to provide an exhaustive list of circumstances, examples of situations where existing buildings may be affected include:

- A development to be sited immediately adjacent an existing carport - an inspection of the carport would allow for the accredited certifier or council to determine whether the required openings would be retained.
- A new commercial building - an inspection of existing site buildings enables the accredited certifier or council to be satisfied that any existing alternative solutions will not be impacted upon.



The inspection required pursuant to Clause 143B will ensure existing fire safety measures are identified within existing buildings

It is recommended that in all circumstances where buildings occupy a development site, irrespective of their scale and built form, an inspection of these buildings is undertaken prior to the issue of a construction certificate.

A site inspection is not required in circumstances where the site is vacant (i.e. a greenfield site) as strictly provided by the wording in Clause 143B.

Information Sheet – ‘Compliance with BASIX: the certifier’s role’

The Board provides advice to accredited certifiers, councils, developers and the general public on certification and accreditation issues through a series of information sheets. A new information sheet (Information Sheet No. 18) has been prepared entitled ‘*Compliance with BASIX: the certifier’s role*’, available at www.bpb.nsw.gov.au.

Amongst other things, the information sheet identifies what BASIX commitments need to be identified at the various stages of the building approval process and the construction phase. In summary, the information sheet provides the following advice:

At the development application stage

- BASIX commitments with a tick in the development application column of the certificate need to be depicted on the drawings or, if not practical, on the plans as text.
- You can change your BASIX commitments prior to the determination of the development application.
- If you change your plans you may require a replacement certificate where the amendment results in the development differing in any material respect from the description contained in the original BASIX certificate.
- It is possible to change your BASIX commitments after development consent is granted and before the construction certificate is issued. Again depending on the extent of the changes a new BASIX certificate may be required.

At the construction certificate stage

- BASIX commitments with a tick in the construction certificate column of the certificate need to be shown on all accompanying plans and specifications. Similarly such details may be provided on the plans as text or within tables.
- You can change some commitments on your BASIX certificate after the construction certificate has been issued provided those aspects have not yet been constructed or installed.

At the complying development certificate stage

- BASIX commitments with a tick in the complying development certificate column of the certificate need to be shown on all accompanying plans and specifications. Again such details may be provided on the plans as text or within tables.
- You can change your BASIX commitments prior to the determination of the complying development certificate.
- If you change your plans you may require a replacement certificate where the amendment results in the development differing in any material respect from the description contained in the original BASIX certificate.
- You can change some commitments on your BASIX certificate after the complying development certificate has been issued provided those aspects have not yet been constructed or installed.

At the construction stage

- During construction, the certifying authority should be aware of all of the commitments listed in the BASIX certificate particularly when conducting critical stage inspections.

At the occupation certificate stage

- The occupation certificate is not to be issued until all relevant commitments in the BASIX certificate (identified with a tick in the “Certifier check” column) are certified by a certifying authority in addition to the commitments required to be met satisfying the development consent.
- Once an occupation certificate has been issued the principal certificate authority must access the BASIX Completion Report web-tool and complete a receipt.

All certifying authorities should familiarise themselves with the contents of the information sheet to ensure that they are complying with legislative requirements.

The information sheet is available at http://www.bpb.nsw.gov.au/page/publications/information_sheets.

Plagiarism - University of Technology Sydney Certification Short Course

In order to satisfy the core performance criteria within the Board's accreditation scheme, applicants can elect to undertake the Certification Short Course, available at the University of Technology Sydney (UTS).

The Board has been made aware of cases of assignments for the course being prepared jointly by two or more participants, or of one person's assignment being extensively copied by another participant. This is plagiarism: both the Board and UTS consider plagiarism to be unacceptable behaviour and will take strong action where evidence of plagiarism has been identified.

The purpose of this article is to re-iterate the Board's firm stance on this issue. Where a candidate for accreditation has been involved in plagiarism, that person will be deemed to have failed the UTS course and the Board will determine whether that person is or remains a "fit and proper person" to hold an accreditation under the accreditation scheme.

Payment of Long Service Payments Corporation Levy Online

You are now able to pay the Long Service Payments Corporation Levy online. The Corporation has introduced an Online Levy Payment facility for individual clients.

Payments can only be processed where the value of work is between \$25 000 and \$571 714 with the facility only accepting full levy payments. That is, no part payments will be possible.

Those using the facility will be able to obtain a receipt immediately (where the transaction is approved by your banking organisation) for presentation to your respective approving authority.

To pay the levy go to <http://lspc.nsw.gov.au> and click on the Pay Levy Now tab at the top of the screen or go straight to <https://levy.lspc.nsw.gov.au/>.

If you're unable to take advantage of this facility, you will still be able to pay the levy at most councils (direct to the corporation), by post or at the Corporation's Gosford office. As a reminder, no payments are possible over the phone.

NEWS IN BRIEF

Commencement of the Building Code of Australia 2009

The Department of Planning issued a Circular on 1 May 2009, *BS 09-002 Commencement of the Building Code of Australia 2009*, outlining the commencement of the Building Code of Australia (BCA) 2009. The Circular is available at www.planning.nsw.gov.au/planningsystem/brans.asp.

BCA 2009 does not contain any major reforms, however it incorporates amendments identified through the Australian Building Code Board's (ABCB's) Proposal For Change process.

Implementation of NSW Planning Reforms

The NSW Department of Planning is currently in the process of implementing major planning reforms across NSW to create a more efficient, accountable and transparent planning system. As the reform program is ongoing, the Department has released the first of a number of updates to give stakeholders and the community a broad understanding of the reforms and the work undertaken by the Department.

The first of these updates was released in May 2009. The update provides a comprehensive history of the planning reform process to date, identifying the commencement of the reform process in November 2007 when the discussion paper (Improving the NSW Planning System) was released for public comment.

The update provides a valuable resource document, retracing the history of the planning reform process and identifying measures and policies that are currently being pursued, and is available at http://www.planning.nsw.gov.au/planning_reforms/p/fact_planning_sheet_reforms.pdf

To subscribe to regular Departmental news updates go to <http://www.planning.nsw.gov.au/enews/index.asp> while planning reform news and links are available at http://www.planning.nsw.gov.au/planning_reforms/index.asp

Review of the *Swimming Pools Act 1992*

In a previous issue of the Bulletin we advised that the *Swimming Pools Regulation 2008* commenced on 1 September 2008, replacing the *Swimming Pools Regulation 1998*.

The Department of Local Government (DLG) is now in the process of undertaking a review of the *Swimming Pools Act 1992*. A considerable amount of work has been undertaken to date. The Department has prepared a report entitled '*Review of the Swimming Pools Act 1992*' in which it recommends, amongst other things, that the scope, form and content of the current Act be largely retained.

The review did however identify a range of options for change requiring further consideration, including:

- removing existing exemptions for pool barriers,
- mandatory inspections of pools,
- requiring councils to keep a pool register,
- increasing penalties for non-compliance, and
- giving councils the power to undertake remedial work on pool fencing.

DLG subsequently prepared a more detailed options paper incorporating suggestions received since the review including compulsory CPR training for pool owners and further restriction of access to spa pools by young children.

DLG is currently inviting comments on the Act review report and the Options Paper (using the feedback form that is available on the DLG's website).

DLG has advised that any options that receive a reasonable level of support will require a cost-benefit analysis before determining if they should progress to legislation.

The closing date for submissions was 12 June 2009.

The findings and recommendations contained in the *Review of the Swimming Pools Act 1992* and Options Paper are available on the DLG's website at www.dlg.nsw.gov.au.

New mandatory inspections – a guideline

In our previous edition of the Bulletin we advised of the new mandatory inspections that came into effect on 2 March 2009.

The Board is currently preparing a guideline to assist certifying authorities in relation to the new inspections and the requirements for recording of those inspections. The guideline will be available shortly. The Board is also working on a more detailed guide to building inspections, upon which it will consult in the second half of 2009.

Continuing professional development (CPD)

Accredited Certifiers: Professional Practice 2009

All accredited certifiers will be required to complete training on ethics in relation to their role as accredited certifiers as part of the Board's 2009 continuing professional development program. The course will be one day in length and is available for certifiers from July.

You will need to register and pay for the course on-line via the following link

www.kiteservices.com.au/bpbethics.html. Payment can be made via credit card or cheque.

Accredited Certifiers: Legislative requirements 2009

Accredited certifiers will also be required to undertake a course later in 2009 on the legislative changes that have commenced or are due to be introduced to the EP&A Act and the BP Act over the course of the year. These changes include new enforcement powers for councils and accredited certifiers, new obligations on certifiers and new critical stage inspections. It is expected that this training will be available from October 2009.

e-Housing Code pilot project

The Federal Government is providing nearly \$6 million to NSW to assist in the delivery of the electronic Housing Code (eHC) Pilot Project. The project is a joint initiative of the NSW Department of Planning and the Local Government and Shires Associations of NSW.

The eHC Pilot Project will both develop and pilot a shared platform for end-to-end processing of complying development under the Housing Code. Applicants will be able to conduct pre-lodgement enquiries to filter information and readily identify whether their development qualifies as complying development under the Housing Code. The project will also facilitate the online lodgement and tracking of applications while determinations will also be issued through the electronic system.

Up to 12 councils across NSW will be selected to participate in the pilot project.

It is hoped that through their involvement with the project, the selected councils will benefit from:

- delivery of better customer service for applicants for Housing Code development, including ready identification of whether a particular site or development qualifies as complying development under the Housing Code
- better quality applications
- opportunities to streamline and reduce processing effort for Housing Code development leading to potentially significant cost savings for councils
- better access to user-friendly information on Housing Code development and local planning instruments
- learning and contributing best practice business processes, and recognition as a role model council
- access to financial resourcing to support council participation in the pilot, including for:
 - * business process analysis and improvement
 - * project management
 - * information technology system improvements
 - * support staff/contractors

It is hoped that the project will be up and running shortly with the project to be completed by June 2010. For more information on the project enquiries can be directed to John Hudson, Director Sustainable Systems Branch, Department of Planning on (02) 9228 6517 or Judy Birrell, Senior Policy Officer – Planning Local Government and Shires Associations (NSW) on (02) 9242 4093.

Important upgrades to BASIX

In our previous edition of the Bulletin we advised you that the Department of Planning was implementing a series of upgrades to the BASIX on-line tool in March 2009. The upgrades included:

- changes to accept 2nd generation Thermal Simulation Software within the Thermal Comfort section of the BASIX tool (this will include AccuRate, BERS Pro, and FirstRate 5 simulation software);
- new questions and commitments about the construction of floors and in-slab heating systems when the Simulation Thermal Comfort method is used (single and multi projects);
- removing cross ventilation from the Single Dwelling DIY Thermal Comfort method and increasing the insulation requirements to be in line with BCA requirements;
- removing “solar electric plus timer” as an option under hot water systems, as it is effectively covered by selecting “solar electric”;
- requiring a scheme name to be selected for reticulated recycled water. This name will also be listed on certificates, making the verification process easier for councils and certifiers; and,
- requesting the Development Application or complying development certificate lodgement date for BASIX projects that are being revised, and showing this on the new BASIX Certificate.

The Sustainability/BASIX team at the Department of Planning recently released a newsletter, the purpose of which was to clarify the status of existing BASIX certificates following the upgrade. The following information was contained in their newsletter which should be of interest to you.

How long are BASIX certificates valid?

All BASIX certificates remain valid for 3 months from the certificate date, regardless of changes that may occur in the BASIX system.

For example, a certificate generated using 1st Generation NatHERS inputs and generated on the 27 March 2009 can be lodged, unaltered, with council up till 27 June 2009. Certificates generated between 28 January 2009 and 27 March 2009 are subject to a progressive phase-out period and after 27 June 2009 all certificates lodged using Simulation Method need 2nd generation thermal assessment certificates (AccuRate, BERS, or FirstRate 5).

Certificates completed on or prior to 27 June 2009 using DIY or Rapid also continue to remain valid for 3 months from the certificate date.

Revision of certificates already lodged with council

The 30 March 2009 release of BASIX allows access to the preceding version of BASIX to permit revision of certificates lodged with the consent authority. Currently, this is certificates generated between 1 July 2006 and 27 March 2009.

Once a valid BASIX certificate is lodged with council, applicants are able to revise and re-lodge the certificate. This is subject to council's assessment that the application can be revised under Clause 55 of the EP&A Regulation, or the consent is able to be modified under Section 96 of the EP&A Act.

If the certificate to be revised was originally lodged with a NatHERS Simulation assessment, then the revised certificate is permitted to be completed using 1st generation (NatHERS) Simulation, and the old BASIX tool. Users will be required to enter the previous lodgement date in BASIX when making the changes. This will be displayed on the front of the new BASIX Certificate.

What does a revised certificate look like?

A revised BASIX certificate will have a pink box (see below) on the front showing the original certificate number, the date that the original application was made to the consent authority, and the application number (Development Application or Complying Development Certificate).

This certificate is a revision of certificate number 211017M lodged with the consent authority on 1 April 2009 with application 12345.

It is the responsibility of the applicant to verify with the consent authority that the original, or any revised certificate, complies with the requirements of Schedule 1 Clause 2A and 4A of the Environmental Planning and Assessment Regulation 2000

The revised (second) BASIX certificate will have the same number as the original with a “_02” at the end.

It is council's responsibility to check that the original BASIX certificate was valid and lodged on the date specified.

Note that for a change-over period, some revised 'old version' certificates maybe not be based on the certificate originally lodged for approval. If the currency of a certificate is unclear, please check by emailing basix@planning.nsw.gov.au providing details of the certificate(s) in question.

For any further queries regarding the changes, please contact the BASIX help line at basix@planning.nsw.gov.au.

You can also sign up for updates by subscribing to the BASIX newsletter at www.basix.nsw.gov.au.

Accreditation exam dates

The Board's accreditation exam will be held in Parramatta on the following dates:

- 29 July 2009
- 9 September 2009
- 21 October 2009
- 2 December 2009

To register to undertake the exam, please call the Board on 02 9895 5950. If you are located in a regional area or interstate and would like to undertake the exam closer to your location, please contact the Board to discuss your options.

Subscribing to the BPBulletin

To receive future issues of the BPBulletin, please email: bpb@bpb.nsw.gov.au

Contacting the BPB

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Important note

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In this issue

[Amendments to the Codes SEPP>](#)

LEGISLATION
COMMENCED IN 2009 >

[Infrastructure SEPP>](#)

[S94E Directions>](#)

[Affordable Housing SEPP>](#)

PRACTICE ADVICE

[Info to accompany certificates>](#)

[On-time renewal>](#)

[Fire safety schedules and fire safety certificates >](#)

NEWS IN BRIEF

[EOI - Board Committees>](#)

[NSWFB Records Management>](#)

[Fraudulent Home Warranty Insurance>](#)

AMENDMENTS TO THE CODES SEPP

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial) 2009 and Environmental Planning and Assessment Amendment (General Commercial and Industrial Code) Regulation 2009 commenced on 7 September 2009, following implementation workshops for accredited certifiers in August 2009.

Two Circulars include advice about the new Housing and Internal Alterations Code and the new General Commercial and Industrial Code, in addition to the changes to the existing exempt and complying development codes.

[Circular PS 09-021](#)
[Circular PS 09-022](#)
[User Guide](#)

[Back to top](#)

LEGISLATION COMMENCED IN 2009

The Board and the Department of Planning have released a number of publications to support legislation commenced in 2009. More information can be found at the [Department of Planning website](#) or the [Building Professionals Board website](#).

Amended school provisions under the Infrastructure SEPP 2007

A Department of Planning Circular details an amendment to the Infrastructure SEPP to ensure the NSW planning system supports the Australian Governments economic stimulus package for government and non-government schools and TAFEs.

[External wall cladding systems>](#)

[Builders Warranty Insurance Update>](#)

[BASIX update>](#)

[e-Housing Code>](#)

[CPD>](#)

[Accreditation exams>](#)

[Your feedback>](#)

[View the Circular](#)

[Back to top](#)

Section 94E directions - complying development certificates

When an accredited certifier imposes a condition under section 94 or 94A of the EP&A Act on a complying development certificate, the condition must now be in accordance with the relevant contributions plan in addition to any directions issued by the Minister under section 94E of the Act as is the case for councils. Until now an accredited certifier has not been required to comply with such directions. An amendment to section 94EC of the Act has now rectified this anomaly.

[View the Directions](#)

[View the Circular](#)

[Back to top](#)

Affordable Rental Housing SEPP 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 commenced on 31 July 2009 and is designed to increase the amount and diversity of affordable housing in NSW by encouraging home owners, social housing providers and developers to invest and create new affordable rental housing to meet the needs of our growing population and existing residents.

[View the policy](#)

[Back to top](#)

PRACTICE ADVICE

Information to accompany certificates

The EP&A Act requires accredited certifiers to provide specific information to the consent authority and/or council when a complying development certificate or a construction certificate is issued.

An accredited certifier must, within two days of the determination of a complying development certificate, forward copies of the information listed in clause 130(4) of

the EP&A Regulation, while clause 142(2) of the Regulation lists the details required to accompany the determination of a construction certificate.

[View the legislation](#)

These legislative requirements assist the monitoring of the planning system and helps identify any areas that need to be improved. Accredited certifiers should review their work processes and procedures to meet these requirements.

[Back to top](#)

On-time renewal of accreditation

There have been several recent cases of accredited certifiers failing to submit applications for accreditation renewal before their accreditation lapsed. Accredited certifiers are unable to work unless accreditation is renewed. The Board has no discretion to consider late applications, even those lodged one day after accreditation lapses.

Accredited certifiers should confirm their accreditation details, including their renewal date, the categories for which they are accredited and their registered contact details. All this information is available on the Boards website.

[Back to top](#)

Fire safety schedules and fire safety certificates

The Board has received complaints that some certifiers are omitting key statutory fire safety measures from the fire safety schedule (FSS) and fire safety certificate (FSC) for relevant buildings.

Part 9 of the EP&A Regulation 2000 outlines what is required to be contained within an FSS and FSC, including:

- The FSS needs to detail all required safety measures, relevant BCA provisions and standards of performance.
- A complete and accurate FSC needs to confirm installation of the measures in accordance with the standards in the FSS.

- The FSS and FCS must be consistent with each other (where appropriate).

Failing to include statutory measures correctly in an FSS and FSC may cause problems to the owners of the building when submitting annual fire safety statements.

[Back to top](#)

NEWS IN BRIEF

Expressions of Interest - Board Committees

The Board recently sought new expressions of interest for membership of its Accreditation and Disciplinary Committees. The Board is hoping to draw upon a pool of around 20 external committee members and is currently reviewing submissions received.

[Back to top](#)

NSW Fire Brigades - Records Management System

The Board has received correspondence from the New South Wales Fire Brigade (NSWFB) regarding its new electronic document records management system Oracle.

Oracle will improve the management and use of information held by the NSWFB. As a result, from 31 August 2009 the NSWFB is requesting all documents and correspondence (which includes plans) submitted to the Structural Fire Safety Unit and Building Compliance Unit be in electronic format and forwarded to firesafety.nswfb@fire.nsw.gov.au. These documents include, but are not limited to:

- C.144 Application for Initial Fire Safety Report
- C.152 Application for Final Fire Safety Report
- C.188 Application for Fire Safety Exemption
- C.118 Lodgement of Fire Safety Concern.

[Back to top](#)

Fraudulent Home Warranty Insurance

There has been a marked increase in the detection of fraudulent certificates of home warranty insurance issued by licensed builders to home owners. The Office of Fair Trading and the Home Warranty Insurance Scheme Board are working with insurers to address this issue.

If a certifier has any doubt as to the validity of a certificate they should confirm with the insurer (or broker) the authenticity of the certificate. Contact details of insurers approved to provide home warranty insurance in NSW are available at www.fairtrading.nsw.gov.au.

[Back to top](#)

External wall cladding systems

The June 2009 edition of Victorian Building Commissions *Insites Magazine* reported an increased use of external wall cladding systems such as those incorporating polystyrene.

These systems are not referenced as a deem-to-satisfy solution in the Building Code of Australia (BCA). The cladding system must therefore be presented as an alternative solution in a form that a building surveyor can assess and be satisfied that the material, form of construction or design meets the performance requirements of the BCA.

[View the article](#)

[Back to top](#)

Builders Warranty Insurers Withdraw

CGU Insurance and Lumley General Insurance recently announced they will no longer provide builders with warranty insurance.

From 30 November 2009, CGU Insurance will cease issuing new insurance policies for builders warranty while Lumley General will cease underwriting new customers effectively immediately and will cease to issue new insurance policies from 31 December 2009.

Accredited certifiers need to carefully examining insurance produced in support of construction certificates issued by these suppliers after 30 November 2009 (for CGU Insurance) and 31 December 2009 (for Lumley Insurance).

Update to reticulated recycled water in BASIX

Reticulated recycled water remains a popular option for achieving the BASIX water targets in areas with a connection to a scheme. Over 3,000 single dwellings nominated this option on their BASIX certificate from 2005 - 08.

Schemes are added to the BASIX on-line tool following an application from the schemes operator and assessment against a set of criteria. Since January 2008 five new schemes have been added to the BASIX tool.

The most recent list of schemes can be found at www.basix.nsw.gov.au.

Electronic Housing Code pilot project

The Department of Planning and the LGSA will be calling for Expressions of Interest from certifiers to participate in the electronic Housing Code (eHC) pilot project.

The project will develop and demonstrate a shared, integrated platform for end-to-end processing of applications made under the current version of the NSW Housing Code (lots greater than or equal to 450m²). Twelve councils and a group of accredited certifiers who operate in these Council areas will be selected to participate in the pilot.

An invitation to express interest in the project and a short survey will be emailed to accredited certifiers by the Department. If you have any questions please contact Helen Ting from the Departments e-Planning team on (02) 9228 6504.

Continuing Professional Development (CPD)

Accredited Certifiers: Professional Practice 2009

The Accredited Certifiers: Professional Practice course for 2009 focused on ethics. The last of the sessions will be held on 29 October. Certificates will be sent to those

who attend the course or who do the course by correspondence. The DVD will be forwarded to those who nominated to do the course by correspondence in the coming weeks.

Accredited Certifiers: Legislative Requirements 2009

Accredited Certifiers are advised that the second course of CPD will not be held and no additional course will need to be completed in its place.

[More details](#)

[Back to top](#)

Accreditation exam dates

The Boards accreditation exam will be held in Parramatta on 21 October 2009 and 2 December 2009.

To register please call the Board on 02 9895 5950. If you are in a regional area or interstate and would like to undertake the exam closer to your location, please contact the Board to discuss your options.

[Back to top](#)

BPBulletin - a new look

The BPBulletin is undergoing a face lift, a transformation. The Board is trialling a new look for the BPBulletin, a structure that is similar to other e-news style publications. It is hoped that the new format will make the information in the Bulletin is more accessible and user friendly.

As the audience of the BPBulletin, we would like to get your feedback.

If you wish to comment on the new format or even if you would like to tell us what sections of the BPBulletin you find most interesting or relevant, please e-mail us at bpb@bpb.nsw.gov.au. Your feedback will help ensure the product we deliver meets the needs and preferences of its readers.

[Back to top](#)



In this issue

[COUNCIL
ACCREDITATION -
EXHIBITION >](#)

[Swimming Pools Act>](#)

[Accreditation Exam
Dates>](#)

ACCREDITATION OF COUNCIL BUILDING SURVEYORS - exhibition

Proposed amendments to the *Building Professionals Act 2005* and the Building Professionals Regulation 2007 will require council building certifiers to be accredited by the Building Professionals Board in order to carry out certification work on behalf of a council.

The accreditation of council building certifiers will ensure that minimum standards are set for all certifiers, whether they are employed by a council or in the private sector.

The Board is currently exhibiting a proposed accreditation model for Council officers. All relevant draft documentation is available on the Boards [website](#).

The closing date for submissions is **Friday 12 February 2010**.

Swimming Pools Amendment Act 2009

The Department of Local Government has issued a circular advising of the commencement of the *Swimming Pools Amendment Act 2009* on 14 December 2009.

- View the [Circular](#)
- View the [Swimming Pools Act 1992](#)

Accreditation Exam Dates

The Boards accreditation exam will be held in Parramatta on:

- 24 February 2010
- 21 April 2010
- 23 June 2010
- 25 August 2010
- 24 November 2010

To register, call the Board on 02 9895 5950.

BEST WISHES FOR THE SEASON

The Board wishes you and your families an enjoyable, safe and peaceful festive season. We look forward to your continued support, interest and contribution in the new year.

The Board will be closed from 12pm Christmas Eve until 9am 11 January 2010.

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Important Note

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BPBulletin



In this issue

[PRESIDENT'S MESSAGE >](#)

[Complaints Snapshot >](#)

[LEGISLATION >](#)

[Complying Development >](#)

[Public entertainment regulations >](#)

[Building code changes >](#)

[PRACTICE ADVICE >](#)

[Court judgement >](#)

[Subdivision and Strata Certificates >](#)

[Occupation certificates >](#)

[Roofing batts >](#)

[New home warranty scheme >](#)

[WHAT'S HAPPENING at the Board >](#)

[Board Committees >](#)

[Auditing >](#)

[Undergraduate courses >](#)

[New forms under EP&A Act >](#)

[Council accreditation >](#)

[Exam dates >](#)

PRESIDENT'S MESSAGE



Welcome to Edition 18 of the *BPBulletin* our second to be sent in an e-news format. We were so pleased many of you provided feedback to the e-news in October thank you for getting involved.

Because of that feedback, we were providing pdfs of the e-news on our website (click on the Publications tab) so that you can download it for your staff, and we are ensuring that links to external sites will go direct to the relevant area rather than to an external home page.

Im keen to involve as many of the people whose interests we represent as possible in our work. So, in the New Year, well be asking for your feedback on how you want us to consult with you your input to our future plans is

important and will be called on.

We have now established a technical reference group with representatives from the different groups we accredit to assist in the development of regulations and guidelines. Thank you to the Associations for nominating members, and to those members for agreeing to assist.

We have also added new external members to our Board Committees that make decisions on discipline and accreditation. By involving you, we are

improving how we do business.

My aim for the next 12 months is to make sure we instigate change that brings about a better system for certifiers and, through these reforms, a better and safer system for consumers and industry.

I recently addressed the Association of Accredited Certifiers conference and you can [read my speech](#) on the Boards website it sums up how I see things happening over the next 12 months.

I look forward to the activities coming up and will update you on progress through these bulletins.

Kind regards

Sue Holliday

[Back to top](#)

Complaints snapshot

The following statistics summarise the work of the Boards Disciplinary Committee and reflect the performance of accredited certifiers during the 2008-09 financial year:

- The Board received the largest number of complaints against accredited certifiers in any financial year (155) however this can be attributed to an unusually large number of complaints received in August 2008 against two certifiers concerning multiple development sites.
- The Board determined 206 complaints the largest number of complaints that have been determined in a year.
- At the end of the 2008-09 year 124 complaints remained outstanding an all time low. At the time of publishing this edition of the BPBulletin this number has been reduced to 70.
- The 53 decisions that resulted in a finding against a certifier reflected the conduct of only 24 certifiers (six per cent of all accredited certifiers).
- The majority of the complaints determined in 2008-09 were received from councils (82 per cent) with neighbours/concerned residents only

making up 10 per cent.

[Back to top](#)

LEGISLATION

Complying development checklist and guide

The Board and the Department of Planning, have developed a checklist to assist council and accredited certifiers when assessing applications for complying development certificates made under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP).

The checklist is accompanied by a Guide to the Complying Development Checklist that explains and adds details to a number of items in the checklist. Neither the guide nor the checklist replace the need for the council or accredited certifiers to read and have a full understanding of the Codes SEPP.

[View the Checklist](#)

[View the Guide](#)

[Back to top](#)

Changes in the regulation of public entertainment

A Department of Planning Circular details the changes that have been introduced to the regulation of public entertainment under the EP&A Act. Changes introduced on 26 October 2009 effectively mean that pubs, restaurants, registered clubs and other venues do not need development consent to provide live entertainment that is part of the venues main business. Place of Public Entertainment licenses and conditions will also have no effect from 26 October 2009.

[View the Circular](#)

[View the Guideline](#)

Key changes to the Building Code of Australia

The Department has issued a new circular which explains the key changes made to the Building Code of Australia in 2009, as they apply to NSW.

[View the circular](#)

[Back to top](#)

PRACTICE ADVICE

Northern Residential Pty Ltd v Newcastle City Council Judgement

On 5 June 2009 the Court of Appeal delivered its judgement in the matter of *Northern Residential Pty Ltd v Newcastle City Council [2009] NSWCA 141*. This matter involved the issue of a subdivision certificate by an accredited certifier/principal certifying authority in circumstances where the inspections of the subdivision work were carried out by an engineer who was not an accredited certifier.

The Court of Appeal found that the inspections were not "prescribed" or "required" inspections under s109E(e)(d) of the EP&A Act but were required to be undertaken pursuant to a Statement of Commitments provided by the developer which came to form part of the conditions of consent granted by the Minister under Part 3A of the EP&A Act. The Statement of Commitments expressly provided that the inspections may be carried out either by the PCA or by another person who the PCA considered to be suitably qualified.

Accredited certifiers should take care to ensure prescribed inspections as described under the Regulation, and other inspections required by the PCA, are conducted by the PCA or another certifying authority.

[View the judgement](#)

[Back to top](#)

Subdivision Certificates and Strata Certificates

A subdivision certificate is a Part 4A certificate issued under the EP&A Act. It authorises the registration of a plan of subdivision under Division 3 of Part 23 of the *Conveyancing Act 1919*.

A strata certificate is a certificate issued under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*

A number of councils are imposing conditions on the development consent for strata subdivision requiring the completion of associated building works prior to the issue of a strata certificate.

The Board's view is that an occupation certificate is the appropriate mechanism for ensuring the building work is completed and suitable for occupation and that the strata certificate should not perform this role.

[Back to top](#)

Prior to occupation vs prior to issue of the occupation certificate

Section 109E(3)(e) of the EP&A Act requires that, in relation to any building or subdivision work, the PCA must be satisfied that any preconditions required by a development consent or complying development certificate are met before issuing an occupation certificate or subdivision certificate.

Conditions of consent often state that certain works are required to be undertaken prior to occupation. If the consent authority intends that works are required to be undertaken prior to the issue of an occupation certificate then a reference to prior to occupation is insufficient - the condition should specifically state that the works should be undertaken prior to the issue of an occupation certificate.

The Board has taken the view that, with respect to complaint investigations, the absence of a reference to an occupation certificate in a condition of consent relieves the certifier of responsibility for ensuring compliance with that condition.

[Back to top](#)

Roofing batts - a potential fire risk

In response to a number of recent house fires caused by roofing batts being laid incorrectly over down lights, the Office of Fair Trading has prepared a form for installation contractors to sign, confirming that they know how to correctly install ceiling insulation.

[View the form](#)

[Back to top](#)

New home warranty insurance scheme

As reported in our last *BP Bulletin*, CGU Insurance and Lumley General Insurance recently announced they will no longer provide builders with warranty insurance. Certifiers were advised to carefully examine insurance produced in support of construction certificates issued by these suppliers after 30 November 2009 (for CGU Insurance) and 31 December 2009 (for Lumley Insurance).

In response to concerns that current market conditions are likely to lead to more insurers exiting the market in the near future, the Premier recently announced a new home warranty insurance scheme that will be underwritten and capitalised by the NSW government and funded by premiums.

[View the press release](#)

[Back to top](#)

WHAT'S HAPPENING at the Board...

Expressions of Interest - Board Committees

The Board has formally offered positions to 26 external committee members for representation on the Accreditation and Disciplinary Committee. Their term of appointment will be for a period of 24 months.

[Back to top](#)

Auditing of accredited certifiers

One of the key functions of the Board is the auditing of accredited certifiers and councils in their capacity as certifying authorities. An audit generally involves a review of development files for which the accredited certifier was the certifying authority. In the 2008-09 financial year 75 accredited certifiers

were audited. A further 100 audits will be undertaken throughout the 2009-10 financial year.

To date, the Boards approach has been one of assistance. Upon identifying any problems, Board staff have been finding ways to reduce the likelihood of them re-occurring. The Board will continue to focus its audits on assisting certifiers perform their role as opposed to pursuing disciplinary action.

To assist the Boards staff to conduct file reviews an Audit Checklist has been developed. The checklist provides a guide and process for the investigator to follow and a convenient document in which to record details relevant to the investigation. The checklist is also a useful guide for certifiers as to the matters the Board generally reviews during an audit.

[View the checklist](#)

[Back to top](#)

Building surveying undergraduate courses

The Board has identified a need to work more closely with educational institutions and other training providers to overcome the shortage of qualified building surveyors both in the private sector and within councils. The Board has held discussions with Charles Sturt University, the University of Technology (Sydney), the University of Western Sydney and Newcastle University regarding the establishment of Building Surveying undergraduate courses.

It is hoped that, as a result of these discussions, at least one of these institutions will provide an undergraduate course, commencing in 2010.

[Back to top](#)

Standard forms under the EP&A Act

As a consequence of ongoing legislative changes, standard forms being used both by councils and accredited certifiers require updating. Inaccurate references to sections of the EP&A Act and Regulation have been the subject of considerable discussion at meetings of the Boards Disciplinary Committee.

While the EP&A Regulation generally specify the requirements for specific forms, the Board is preparing a series of standard forms to assist councils and accredited certifiers. These forms include a complying development certificate application, a construction certificate application, an application for

an occupation certificate and an application for a subdivision certificate - these forms will be available in early 2010.

[Back to top](#)

Accreditation of Council building surveyors

In late 2008, the Board exhibited a proposal regarding the accreditation of council building surveyors. In response to the submissions received the Minister announced that further consultation would be undertaken.

An amended model for the accreditation of council building surveyors, including amendments to the Building Professionals Regulation 2007 and the accreditation scheme made under the *Building Professionals Act 2005*, was exhibited to key stakeholders in July.

The Board is currently making further changes to the model which is due to go on public exhibition in late 2009 / early 2010 and will provide updates on the progress of the accreditation of council building surveyors.

[Back to top](#)

Accreditation exam dates

The Boards final accreditation exam for 2009 will be held in Parramatta on 2 December. To register please call the Board on 02 9895 5950. If you are in a regional area or interstate and would like to undertake the exam closer to your location, please contact the Board to discuss your options.

[Back to top](#)

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