Info sessions on the accreditation of council building certifiers - outcomes

Introduction

- The certification of building work is regulated in NSW because of the important nature of the work undertaken. Consumers rely heavily on building certifying authorities to ensure their developments meet national building regulations, standards and codes so they are fit to use and occupy.

- The Board is working to introduce the accreditation of all building surveying practitioners across the state to give the community assurance that anyone who certifies building work from both the private and public sectors has been independently assessed to have the appropriate level of qualifications and experience to carry out the work, is required to undertake ongoing training in areas critical to their daily activities, and is accountable to one oversight body for the professional decisions they make. Consumers will be better able to make decisions about who to use as their certifying authority based on full information, and the professionalism and competence of council building certifiers will be given formal recognition.

Recent information sessions

- Over 700 council building certifiers and their managers recently attended a series of information sessions held by Board staff to explain the proposals for the accreditation of council building certifiers that are currently on exhibition (see http://www.bpb.nsw.gov.au/page/events-and-news/).

- The focus of the discussion at the sessions was the proposed accreditation process, the requirements to which council officers are proposed to be subject once accredited, how to change accreditation categories, how councils can apply for exemptions from the accreditation requirements and the Board’s survey of council officers’ qualifications and experience.

- During the sessions, attendees provided comments on these matters, with a focus on four particular areas:
  - The basis for introducing the accreditation of council certifiers.
  - The proposed accreditation process and ongoing accreditation requirements.
  - The implications of the proposals.
  - The implementation of the proposals.

- Over 600 questions and comments were recorded during the sessions relating to these matters. Attendees expressed broad support for a number of aspects of the proposals, including the funding proposed, the ability of the assessment model to enable transferability of accreditation across local government areas.
the flexibility proposed in relation to the accreditation requirements and the continuing professional development requirements, the relatively low cost of the accreditation process, enabling a transition period into the accreditation system and the ability for councils to obtain exemptions where necessary.

- Attendees also provided comments in relation to concerns they have with other aspects of the proposals.
- The purpose of this info sheet is to provide a summary of the concerns expressed at the sessions, under the four key areas identified above, so as to ensure the Board is fully aware of the expected impacts of the proposals and to assist with the preparation of written submissions on the proposals.
- The summary of concerns has been prepared in good faith but does not purport to represent the views of the NSW Government, the Building Professionals Board or Board staff.

The basis for introducing the accreditation of council certifiers

The imposition of accreditation on council building surveyors
- The reasons the government is seeking to ‘force’ accreditation upon council building certifiers who have been carrying out building surveying on behalf of councils for many years without significant problems.
- The steps the government will take if councils do not move to have anyone accredited, nor to seek exemptions, when the new requirements commence.
- The application of the accredited bodies corporate model to councils to enable the accreditation of the council body, instead of the accreditation of individual officers.
- The accreditation of council officers in relation to only one aspect of their mixed role as council employees.
- The improbability of achieving a ‘level playing field’ between those accredited in the public and private sectors.

The expected costs to councils (and ratepayers)
- The anticipated costs to be borne by councils in relation to the proposals, including annual renewal fees, ongoing training requirements, and lost staff time undertaking assessments / training.
- The itemising of the expected costs to enable councils to develop their fee management plans.
- The possibility of the proposed accreditation fee of $250 increasing over time.

Shortage of building surveyors
- The need for strategies to be developed to increase the number of building surveyors.

The proposed accreditation process and ongoing accreditation requirements

Types of accreditation
- Developing a category of accreditation, or conditioning categories, to allow a person to carry out inspections only.
- The accreditation of trainees, such as through conditional accreditations or ‘assistant’ accreditation grades.
- The possible extension of the accreditation process to council officers who undertake fire safety upgrades and issue building certificates.
- Removing the proposed prohibition for categories of accreditation B1-B3 on council officers issuing certain compliance certificates.

The accreditation process proposed
- The alignment of courses with all of the accreditation requirements so as to streamline the accreditation process.
The counting of other types of experience towards certification experience because of the unavailability in certain areas of some types of work, or the move of a person into a supervisory / mentoring capacity and away from actual certification work (transferability of skills gained elsewhere to certification work).

The need for an appeal mechanism where a council requires an officer to be accredited in a category the officer has not applied for or where the council refuses to give a recommendation for accreditation.

The recognition of the Australian Institute of Building Surveyors’ (AiBS) national accreditation as satisfying all of the requirements for accreditation under the scheme.

The definition of ‘the council’ for the purposes of making a recommendation to the Board on an accreditation application as the councillors or the General Manager.

The capacity of the proposed third party assessors / training providers to undertake the competency assessments.

The renewal of accreditation

- The renewal of accreditation on an annual basis.
- The maintenance of B1 accreditation where the majority of work at a council is only at B2 and B3 level.

Continuing professional development (CPD)

- The impact of requiring council officers to undertake CPD in relation to building surveying given their other additional responsibilities.
- The cost to councils of officers completing CPD requirements and the lack of equality in councils having to fund the CPD for building surveyors while other council staff are not required to undertake CPD.
- The impact of the proposed CPD program on those who work part-time and/or who take extended leave and apportioning of CPD requirements in relation to the percentage of building certification work carried out by individual officers.
- The phasing in of the full requirements for the CPD program overtime.

The liability of council officers

- The personal liability of council officers for fines where their salary levels in council are not commensurate with money that can be earned in the private sector and where council officers are required to work under direction from their council.
- Clarifying the liability of council officers who sign certificates although the council remains the certifying authority / principal certifying authority (PCA).
- Allowing accredited council officers to issue orders under the Environmental Planning and Assessment Act 1979 to enforce conditions of consent without having to rely on the council to make that decision.
- The need for council officers to be subject to two levels of accountability - to their council and to the Board.
- The ‘interaction’ of the council’s complaints process with the Board’s complaints process.
- The possibility that vexatious complaints will be made against council officers because they are an ‘easy target’.
- Resourcing of the BPB to investigate and consider complaints against council certifiers in addition to certifiers from the private sector.
- The use of the Board’s disciplinary register in relation to council certifiers.
- Professional indemnity insurance requirements:
  - The sufficiency of the council insurance requirements already in the BP Act to cover the liability of council officers.
  - The need for council officers to take out personal insurance to cover the investigation and determination of complaint matters and the cost of possible fines, and the responsible party to pay for any such insurance.
  - The effect of the proposed insurance requirements on insurers.
Conflicts of interest

- The ‘unreasonableness’ of the proposed conflict of interest provisions in preventing council officers from providing ‘design’ advice to members of the public and then issuing a Part 4A certificate under the Environmental Planning and Assessment Act 1979 as council officers are not paid directly by applicants; have always provided this ‘service’ to the public as it is impractical to ask applicants to go back to architects/designers, who know little about the Building Code of Australia (BCA), to have their designs changed to comply with relevant standards; and may be the subject of vexatious complaints by applicants to the Board.

- The possibility of allowing accredited certifiers (from both the private sector and from councils) to give design advice for class 2-9 buildings limited to the deemed-to-satisfy provisions of the BCA, similarly to that currently allowed for class 1 and 10 buildings.

- The Board giving consideration to:
  - allowing councils to construct ‘Chinese walls’ to allow one council officer to provide design advice and another to certify the work,
  - how councils are to deal with the certification of their own buildings,
  - the interaction of clauses 93 and 94 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) with the conflict of interest provisions in the BP Act and Building Professionals Regulation 2007 (BP Regulation) (allowing councils to approve developments that do not comply with the provisions of the BCA), and
  - in country areas particularly, the interaction a council officer can have with applicants, eg socially.

- The extension of requirements on council officers to provide pecuniary interest information to those certifiers from the private sector.

Maintaining accreditation

- The maintenance of accreditation by those working part-time, taking sabbaticals or maternity leave in relation to the payment of renewal fees and the undertaking of CPD requirements.

- Maintaining accreditation where an officer is not carrying out certification work at the required level for their category.

The implications of the proposals

Council structures

- The impact of the accreditation requirements on the existing organisational structures and delegations practices within councils, for example the effect on existing delegations of supervisors / the General Manager to sign certificates where they may not become accredited.

Employment conditions of council officers

- The anticipated effect of the proposals on officers’ salaries and other employment conditions.

- The potential jeopardising of the continuing employment of council officers who do not wish to become accredited.

Transferability of accreditation between councils

- The granting of accreditation state-wide (ie portable accreditation) to avoid officers having to gain accreditation for each relevant council area, the time it may take for the Board to consider new applications, and the need for council officers to seek an ‘A’ category of accreditation if they move councils at the end of the five year transition period.

- The effect of non-portability of accreditation across council areas on the employability of officers.

Obtaining exemptions

- The time for the consideration of applications for exemptions by the Board given the statutory requirement in the BP Act for the Minister’s involvement.

- The anticipated acceptable grounds to seek exemptions.
The use of the exemption process to avoid the objectives of the accreditation requirements.

The implementation of the proposals

Commencement of the requirements
- The extent of the resources of the Board to deal with accreditation applications and complaint matters for both certifiers from the private sector and from councils.
- Addressing the performance of certifiers from the private sector before the accreditation of council certifiers is introduced.
- The adequacy of the six month period proposed for the Board to process up to 1000 applications for accreditation for council building certifiers.

The proposed transitional period of accreditation
- The proposed unavailability of the ‘B’ categories of accreditation for new applicants, or for changing between the ‘B’ categories, at the conclusion of the five year transitional period.
  - The need for council officers to be assessed against all of the criteria for categories A1-A3 after five years where they will continue to work for a council(s) and be supported by council structures and processes.
  - The “grandfathering” effect of the proposals if existing council officers are not required to be accredited in the relevant “A” category of accreditation at the end of the transitional period.
  - The potential cost of accreditation for council officers after the five year transitional period.
  - The introduction of the accredited body corporate model of accreditation for councils if councils are not to remain the certifying authority / PCA at the conclusion of the transitional period.
- The undertaking of qualifications by applicants before the end of the five year transition period.

Where to from here

- Each of the above matters will be considered, along with written submissions received about the documents on exhibition.
- You are welcome to refer to the matters summarised in this info sheet or to add to the matters for the Board to consider in relation to the proposals when formulating your written submissions.
- All submissions must be sent by Friday 27 February 2009 to:

  The Director  
  Building Professionals Board  
  PO Box 3720  
  Parramatta NSW 2124  
  or DX 22 Parramatta  
  or email policy@bpb.nsw.gov.au

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