

Summary of Selected Complaints & Investigations

Audit Special: December 2011

The Building Professionals Board audits the work and activities of accredited certifiers and council in their capacity as certifying authorities.

Audits are intended to assist certifying authorities to comply with procedural requirements under the EP&A Act.

It is anticipated that certifying authorities will review their practices in light of the issue raised in this Summary to ensure legislative changes are met and best practice procedures are adopted.



Building
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Introduction

The Building Professionals Board has powers under the *Building Professionals Act 2005* (BP Act) to audit accredited certifiers and councils in their certification role. The Board draws on these powers to improve practices and procedures.

The findings of some of the audits undertaken by the Board during 2011 that related to building work are described below.

In summary, certifying authorities are, in some cases, failing to:

- address the requirements relating to fire safety certificates and fire safety schedules when determining complying development certificates (CDCs)
- issue the CDC before work commences
- determine applications for certificates within the terms of their accreditation level
- carry out a site inspection prior to the issue of a CC for an existing building
- include the building classification and details of the relevant development consent on the construction certificate (CC)
- ensure descriptions on CCs are consistent with the development consent
- use the term 'staged construction certificate' rather than 'partial construction certificate'
- ensure occupation certificate (OC) application forms include the description and type of certificate applied for
- ensure an application for a OC contains the required information
- attach copies of any documents that were lodged with the application for an OC to the OC, including compliance certificates, fire safety certificates, BASIX obligations, record of critical stage inspections
- forward documents lodged with an OC to the council as required
- clearly separate existing and proposed fire safety measures in fire safety schedules
- issue a final OC only if a final fire safety certificate has been issued for the building
- ensure a BASIX completion receipt is applied for.

Complying development certificates

CDC applications

Clause 126 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) requires an application for a CDC to contain the information and be accompanied by the documents specified in Part 2 of Schedule 1 of the Regulation.

An audit that involved a CDC application for building work revealed the following were not included with the application, as required:

- a list of the existing fire safety measures provided in relation to the land or any existing building on the land
- a list of the proposed fire safety measures to be provided in relation to the land and any building on the land as a consequence of the building work.

Determining CDC applications

To ensure consistency in the assessment of applications for CDCs, certifiers are advised to utilise the [General Housing Code](#) and [General Commercial and Industrial Code](#) checklists.

Some CDCs have been issued for works that have commenced. Section 84A of the EP&A Act only allows a person to carry out complying development if, among other things, a CDC has been issued.

Construction certificate stage

CC applications

CC application forms must include a section requesting the class of building under the BCA and the registered number and date of issue of the relevant development consent.

The Board's [standard templates](#) can be used as the basis for CC application forms to ensure all details are contained in the application.

Using checklists to create files and assess CC and other applications may provide a more consistent approach to assessment processes for certifying authorities.

Site inspection

Clause 143B of the EP&A Regulation provides that a certifying authority must not issue a CC for development on a site which affects an existing building unless a council or certifying authority has carried out an inspection of the building.

Certifiers should consider completing standard inspection forms on site during an inspection and placing these on the file for the purpose of record keeping. The file should also contain a record of all the matters set out in clause 143C(3) of the EP&A Regulation, including details of the existing fire safety measures in the building.

Issuing a CC

In one audit, the fire safety schedule that accompanied the CC contained only one column titled 'Existing/Proposed.'

Clause 168(3) of the EP&A Regulation requires a fire safety schedule, among other things, to include and distinguish between:

- the fire safety measures currently implemented in the building premises
- the fire safety measures proposed or required to be implemented in the building premises.

The description of the fire safety measures should be separated in the fire safety schedule into two columns to prevent confusion, particularly for third parties preparing annual fire safety statements.

The description of the proposed development on a CC must be consistent with the description on the relevant development consent.

Where only part of the work that is the subject of development consent is to be carried out, the CC should not be described as 'partial' - this may suggest only a percentage of the proposed building will be constructed. The term 'staged construction certificate' is more appropriate.

Acting within the terms of accreditation

A Board audit revealed that an accredited certifier issued a CC for the fit out of an existing building which was already subject to alternative solutions to achieve compliance with the relevant performance requirements of the Building Code of Australia (BCA). Conditions on the certifier's accreditation stipulated that the certifier could only issue certificates which involved building work within a certain floor area limitation. Further, where the building work involved the use of an alternative solution in relation to a provision of the BCA which dealt with fire protection, referral of the application to the NSW Fire Brigades for assessment and comment was required. The certifier did not act with the terms of their accreditation.



Occupation certificate stage

OC applications

Forms for OC applications must include the description of works and the type of OC applied for.

Clause 149 of the EP&A Regulation details the information required to be included and documents required to be submitted with an application for an OC. These include a copy of any relevant development consent or CDC, CC, fire safety certificate, compliance certificate and BASIX certificate.

A fire safety certificate must list the essential fire safety measures in the building or part of the building, as well as the minimum standard of performance specified in the relevant fire safety schedule in relation to each measure.

Issuing an OC

Clause 153 of the EP&A Regulation provides that a final OC must not be issued unless a final fire safety certificate has been issued for the building.

The final fire safety certificate certifies that each essential fire safety measure in the current fire safety schedule was assessed by a properly qualified person and found to be capable of performing to at least the standard required by the current fire safety schedule for the building.

A number of audited files indicated that an application for a BASIX completion receipt within two days of issuing the final OC was not made, as was the requirement at the relevant time. Clause 154C(1) of the EP&A Regulation has since been changed to require the certifying authority to apply for a BASIX completion receipt for a BASIX-related development *before* issuing a final OC.

Clause 151(2)(b) of the EP&A Regulation requires that documents lodged with the OC be forwarded to the council within two days of determining the application for the certificate. The Board's review of one council's files confirmed that a final fire safety certificate had not been submitted by the certifying authority to the council with the OC.

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