



## Building Certification Process: Educational Aspect - A Review

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# Building Certification Process: Educational Aspects – A Review

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## **Abstract**

*This paper presents a review of the procedures involved in the building certification process with a special focus in New South Wales. It has been found that building certification process is a complex process where differences may happen between the owners and certifying authority due to lack of communication. The civil engineering students in the university are not well aware of the building certification process in a greater detail. It is an art that is to be learnt when a learner works under an expert certifier. It is recommended that civil engineering students should get few lectures on building certification, which could assist them to become a better construction and design engineer.*

**Keywords:** Building certifier, private certifier, council, engineering, learning

## **INTRODUCTION**

Building certification is an important research topic (e.g. Aktas et al., 2015; Gandhi and Jupp, 2014; Ugur and Leblebici, 2017; Zuo et al., 2017). Building regulation and certification are a significant part of the NSW planning system. The general outcomes that regulation and certification seek to secure are two-fold. Firstly, a level of building performance consistent with the needs of an advanced society in terms of health, safety, amenity and sustainability and secondly compliance consistent with planning expectations as defined by the planning system. The current system of certification has evolved from the introduction of private certifiers in 1998, enabled by amendments to the Environmental Planning and Assessment Act 1979 (EP&A) and Regulations.

Quality of buildings, administrative changes were put in place within Department of Urban Affairs and Planning for regulatory oversight of certifiers and in 2005 the Building Professionals Act established the Building Professionals Board (BPB), which took over this function. Subsequently, there have been numerous legislative amendments and changes to regulations relating to certification. These have been essentially accretive and so the legislative framework has become unnecessarily complex and in some cases no longer relevant.

With the establishment of a new planning system, the opportunity presents to take a fresh look at arrangements which have essentially developed as flow-ons from the last major reforms dating back to the 1979 commencement of the EP&A. Accordingly, the well-established principles of developing regulatory systems that are efficient in an economic sense, as well as effective having regard to ease of administration, achievement of desired outcomes and minimizing the compliance burden, should now be applied.

Local governments were responsible for building certification process and concerns were often raised about costs and delays under this model. In later years building certification in the state has been privatised. Privatisation occurred to improve the efficiency and flexibility of the building certification process. Building certifiers provide a regulatory oversight role in the building industry, helping to ensure that building codes and standards are adhered to and buildings are constructed safely and fit for

its intended purpose.

Current model of building certification allows customers to seek certification services from a range of licensed and accredited private building certifiers or from their local government. There are no standardised fees for certification services, allowing customers to find the best price and range of services that meets their needs. There are no rules in the state about who may engage a private certifier. Generally, this is done by the builder or sometimes the property owner/developer.

An owner can also engage a certifier; however this is not common practice. All other Australian jurisdictions currently have one form of private certification, and the majority has a dual model, which includes the additional option of local government certification.

## **BUILDING CERTIFICATION BACKGROUND**

The Complying Development Certificates and Construction Certificates must be determined by a Principal Certifier (PC), unlike Development Applications which can only be approved by Council. Once the local government or individual certifier obtains development consent, you are required to appoint a Principal Certifier to issue a Construction Certificate and undertake inspections.

### **WHAT IS A PRINCIPAL CERTIFIER**

A Principal Certifier is the person or authority responsible for ensuring compliance with the conditions of development consent, the Building Code of Australia, and the objectives of the Environmental Planning & Assessment (EP&A) Act 1979.

A PC is required to:

- Ensure compliance with the conditions of consent
- Issue the Construction Certificate
- Conduct inspections at each required critical stage of construction
- Promptly advise the applicant, after each relevant inspection, of any outstanding work
- Issue the Occupation Certificate.

### **PRIVATE CERTIFIERS AND LOCAL COUNCILS**

When the certification function was partially privatised with the legislated introduction of private certifiers, the boundaries between the functions of Councils (extending beyond certification) were not clearly drawn.

The policy intention was to create competition between the private sector and local Councils for the provision of certification services. Now, private certifiers are well established and their market share is estimated to be well in excess of 50% of the building approvals market by value (estimates range as high as 70%, although there is no reliable data) and probably around 50% by number.

Most councils accept that private certifiers are here to stay, but there are tensions. These tensions arise in a number of areas. First, there is a perception among stakeholders consulted for purpose that private certifiers are not adequately supervised or disciplined and that complaints are not dealt with in either a timely or satisfactory fashion.

Further, the highly prescriptive regulations dealing with investigations by the Building Professionals Board result in a high threshold for raising complaints (requirements for statutory declarations and extensive documentation). Complaints take too long to resolve and are sometimes dismissed on

technical grounds.

This leads to the second area of concern, that Councils are left to “pick up the pieces” when things go wrong and suffer a public loss of confidence because the community looks to them to resolve these sorts of issues.

Another area of concern is that Councils have lost control of consent compliance. Some appear to stand back when a private certifier is appointed because they feel that any consequences flowing from the actions of private certifiers should be the province of the State.

In addition, some stakeholders believe that private certifiers rarely report cases of non-compliance to Councils. On the other hand, there appear to be instances where private certifiers (who for the most part are former Council employees) work cooperatively with local Council inspectors.

Whether the “level playing field” contemplated by policy-makers who thought the principles of competition policy should apply in this area, either exists or is achievable is a moot point. Certainly there are many imperfections in this “market”.

Council employees who undertake the provision of certification services invariably take a more holistic view of their role. They tend to be, first and foremost, employees of Council who regard the interests of their local community as their priority. So enforcement of consent conditions and local environmental issues go hand in hand with the certification function. This appears to be the case even in Councils which have separated their certification function and sought to run it on business lines to compete with the private sector.

## **BENEFITS OF A CERTIFICATION MODEL**

- Less of a perceived conflict of interest for certifiers.
- There would be a “one-stop-shop” for consumers in the first instance.
- Standardised fees would allow for greater consistency and confidence in estimating project costs.
- Some projects could be subject to lower certification fees based on a standardised fee structure.
- Certifiers would be entitled to an equitable share of certification work.

## **OPPORTUNITIES**

The introduction of a tougher building regulation regime is essential if code based assessment and private certification are to be expanded. There are a number of issues with building certification and regulation that need further analysis and resolution.

These problems stem largely from the unclear roles and responsibilities of all players and a lack of regulatory clout and oversight of the entire process by the Building Professionals Board (BPB).

The private certification system has a poor track record with respect to issuing certificates that are significantly inconsistent with consents, failing to detect and act on unauthorised work; and certifying incorrect plans or incorrectly applying BCA/Regulations.

The BPB has been criticised for a lack of disciplinary action in response to complaints about certifiers. While there is broad support within the Local Government sector for the changes, there are specific details and practical implications that will need to be resolved.

Notwithstanding the outcome of the current debate, it is critical that Local Government expertise is sought during the development of any policies, guidelines, regulations and detailed implementation.

## **INSURANCE ISSUES**

One consequence of increasing the regulatory burden of the certification process is the impact on the cost and availability of professional indemnity insurance for certifiers.

This in turn could have a major bearing on the willingness of practitioners to remain in the certification business or for new entrants to commence. Building surveyors are sometimes employed by businesses which provide a range of services, including consultancies to the construction industry.

Sometimes decide to withdraw from practicing as certifiers because of increased liability (or perhaps because their employer has chosen to focus on other areas).

Also, some insurers have indicated that Professional Indemnity (PI) cover for building certifiers is for them a marginal business proposition and recent changes may result in them abandoning this type of cover.

There are other insurance concerns. While continued or “run off” cover is available to certifiers who retire or leave the industry, few avail themselves of this cover presumably because of its cost, apparently choosing to expose their personal balance sheets in the case of claims made in relation to jobs completed while they were working.

This means that parties who may wish to make claims have limited recourse. In addition, there is the issue of continuity of cover over the life of a particular project. In the event that a certifier abandons a job for whatever reason, a subsequent appointment of a certifier results in gaps in cover. The BPB has explored the possibility of obtaining group cover to apply to these types of situations, seeking consultancy advice. However, their advice was that without relevant data, insurers would be unlikely to write this type of business.

## **BASIC CERTIFICATION PROCESS**

### **Preliminary consultation and preparation**

Research your proposal and prepare your application documentation using our Property Enquiry.  
Use the residential development application checklist to ensure you include all the required information in your Development Application.  
Have a question? Contact our Customer Service Centre on 02 4921 0333.  
Attend a Pre-Lodgement Meeting (only medium or major applications).

### **Lodgement**

Lodge your application at our Customer Service Centre counter or by mail at a Lodgement Interview (medium or major applications)

### **Notifications and submissions**

Notify adjoining properties (where applicable).  
Undertake internal and external referrals if required.  
Provide progress of your application through Application Tracking.  
Make submissions received available for viewing on the internet.

### **Assessment**

Undertake a site inspection.  
Complete formal assessment against relevant legislation.  
Liaise with applicant if further information is required.  
Complete a report with recommendation for:  
approval (with conditions)  
refusal (with reasons)

### **Determination**

A delegated officer or the elected Council will determine the application.

Written notice is provided to the applicant and objectors.  
If dissatisfied, the applicant may seek:

**Review of Determination**

Modification of Consent  
Appeal to the Land & Environment Court

**Construction Certificate**

Appoint a Principal Certifying Authority (if not already appointed).  
Obtain a Construction Certificate from Council or another accredited certifier, before work commences (if not already obtained).  
Ensure mandatory inspections are undertaken and certified by the Principal Certifying Authority.

**Development commencement**

Lodge Notice of Commencement at least two days prior to commencing works.  
Undertake construction in accordance with your DA and CC approved plans and conditions.  
Ensure mandatory inspections are undertaken and certified by the Principal Certifying Authority.

**Development occupation/use**

Undertake a final inspection and issue an Occupation Certificate when construction is completed and considered compliant.  
The building should not be occupied prior to an Interim or Final Occupation Certificate being issued.

**CONCLUSION**

Accredited certifiers vary in their practices regarding standards adopted and which matters are addressed during mandatory site inspections. This contributes to a lack of confidence in the certification system. There is a poor understanding in the community of the role and desired outcomes of certification. There are gaps in the licensing and accreditation system for building practitioners making it difficult to hold some builders accountable. Current legislative provisions fail to distinguish between certification regarding building standards or consent conditions relating to the built form and the quality of work, leading to consumer confusion. The role of Councils is unclear in relation to enforcing the conditions of development consent. Councils are sometimes reluctant to become involved in enforcement where a private certifier is involved. While there is a lack of data, there is evidence to suggest that certifiers are being joined in actions against builders.

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