

Local Government
Association of NSW



Shires Association of NSW

**SUBMISSION REGARDING THE BUILDING PROFESSIONALS
BOARD PROPOSAL FOR THE ACCREDITATION OF COUNCIL
BUILDING CERTIFIERS**

DATE

FEBRUARY 2009

Submission – Proposed Accreditation of Council Building Certifiers

The Local Government Association of NSW and Shires Association of NSW (the LGSA) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent the 152 NSW general-purpose councils, the special-purpose county councils and the regions of the NSW Aboriginal Land Council. The mission of the LGSA is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the LGSA represent the views of councils to the NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community and the media.

The LGSA appreciate the invitation from the Building Professionals Board (BPB) to make a submission concerning the proposal for an accreditation scheme for council building certifiers. The LGSA also would like to thank the BPB for placing these proposals on extended public exhibition and providing councils and other interested stakeholders with the opportunity to attend workshop sessions on the proposals. The LGSA trust that the feedback from councils and industry bodies will assist the BPB in reviewing the proposed changes and developing a way forward that meets the needs of the Local Government sector and the community generally.

Executive Summary:

The LGSA strongly oppose the proposed scheme for the accreditation of council certifiers. The scheme is unnecessarily complex; will be onerous and costly for councils to implement and administer; and will provide few if any tangible benefits to the community. The accreditation requirements represent a cost shift from the BPB to individual councils and the short time frame for the implementation of the scheme is impractical and ill-considered.

The LGSA also would argue that the extension of the BPB’s complaints and disciplinary procedures to individual council officers is not appropriate given that council officers remain subject to a range of other regulatory and management systems that do not apply to private certifiers. Council certifiers are subject to the provisions of the *Local Government Act*, including the Code of Conduct, councils’ own corporate accountability and disciplinary procedures and external scrutiny by the ICAC, the Ombudsman and the Department of Local Government.

If the objective of the State Government is to upgrade existing certification skills in NSW it is critical that the BPB develop a practical and cost effective pathway to manage that process. The BPB needs to:

- document the nature and extent of any problems with respect to council certifiers – no data or evidence has been provided in these current proposals;
- gather comprehensive and consolidated information on the ‘gap’ between existing qualification and skill levels of council certifiers and the agreed accreditation requirements; and
- develop a practical and cost effective strategy, in consultation with Local Government, to transition certifiers to any new system in an appropriate time frame.

Discussions about the accreditation of council certifiers can then progress in the context of, rather than in isolation from, a strategic framework for certification services in NSW.

If the BPB wishes to extend accreditation to the Local Government sector at this time it is the position of the LGSA that council certifiers should not be individually accredited by the BPB; council itself should be the accredited body. The LGSA are willing to discuss a model of corporate accreditation with the BPB and would be happy to be involved in the development of a strategy for improving the quality of certification services in NSW.

Purpose:

The Building Professionals Board (BPB) has placed on exhibition proposed changes to the Building Professionals Regulation 2007 and the accreditation scheme made under the *Building Professionals Act 2005*. The effect of these changes is to require individual building certifiers in councils to gain accreditation from the BPB in order to carry out their certification duties. The regulation and scheme amendments propose:

- Categories of accreditation for council building surveyors.
- The requirements for accreditation for these officers (qualifications and experience).
- A process for the accreditation of council officers (contained in draft guidelines).

The proposed regulatory changes also extend the disciplinary powers of the BPB to council certifiers.

The LGSA submission canvasses key policy, financial, industrial and governance issues raised by these proposals.

Background

The BPB is proposing that a new system of accreditation of individual council certifiers be introduced in all NSW councils by November 2009. The new council accreditation scheme is different to that applying to private certifiers in many respects; however the BPB has indicated that it is their intention to have a single system of accreditation operating within five years. It is not clear what form this single accreditation scheme would take, nor is there any indication of how council certifiers would be transitioned to a single scheme.

Key aspects of the BPB proposed council certifier accreditation scheme are:

- Introduces 3 new categories of accreditation (B1, B2, B3) with officers required to meet requirements relating to their qualifications, experience (length of service and competence) and suitability ('fit and proper' person test).
- Restricts the accredited officer to work carried out on behalf of a particular council or councils.
- Requires councils to undertake (objective) assessments of officers' qualifications, number of years experience and suitability.
- Requires councils to undertake (subjective) assessments of officers' competencies. Councils may undertake this assessment internally (if they have relevant skilled staff) or arrange for assessment to be undertaken externally. Councils must apply to the BPB in writing in order to undertake subjective assessments. If the council cannot undertake subjective assessments, the BPB will provide qualified assessors at no cost to council for the first accreditation period.
- Individual officers must submit an application for accreditation to the BPB. For each officer, council must provide a recommendation for accreditation to a relevant grade (B1,B2,B3) and provide supporting information, including:
 - Documentation that the applicant is appropriately qualified.
 - Documentation demonstrating that the applicant has the required length of experience.
 - A statement by qualified assessor/s that the applicant has the required competencies.
 - Sign off that council is satisfied the applicant is a fit and proper person to hold accreditation.
 - Sign off that there is no other matter council is aware that would preclude the Board from approving the application.
- Where individual council officers cannot meet the accreditation requirements of the BPB they must obtain the relevant qualifications or obtain recognition of prior learning and/or undertake additional training. If officers cannot meet the accreditation requirements either of a particular grade or at all, they will be restricted to particular categories of certification work or will be unable to undertake certification work at all.
- The application fee for accreditation is \$250 per officer, significantly lower than the fee charged to private certifiers. Accreditation must be renewed annually.

- Council must provide insurance cover under council's general insurance policy. If officers are not covered by the council insurance they must meet the insurance requirements of the BPB Act.
- Councils must keep records of the name, accreditation number and projects undertaken by each accredited certifier employed or engaged by council.
- Council must provide information to the BPB within 7 days of:
 - Date of employment or resignation/retirement of accredited certifiers employed or engaged by council;
 - Any complaints received in relation to work carried out by council certifier;
 - Name and number of accredited certifier who is no longer accredited by the AIBS.
- Council certifiers will be subject to the same restrictions, oversight and requirements as private certifiers, including disciplinary provisions of the *Building Professionals Act*, compliance with the code of conduct, conflict of interest provisions and continuing professional development requirements.

Role of BPB

The BPB became operational in 2007. The BPB was established in response to a large body of complaints and significant problems with the quality of work and conduct of a number of private certifiers following the introduction of the system of private certification in 1998. The lag between the introduction of private certification and the establishment of regulatory oversight by the BPB resulted in an environment where poor performance and poor conduct on the part of private certifiers went largely unpunished.

The LGSA has been a strong supporter of the BPB in terms of its regulatory oversight of private certifiers. Dealing with complaints and problems arising from sites under the control of private certifiers is a major issue for Local Government and a source of constant aggravation to council staff. The introduction of private certification in 1998, and in the absence of a strong regulator, has resulted in councils bearing a significant proportion of the costs associated with ensuring accredited certifiers comply with their statutory duties. The cost burden is particularly problematic in areas where the majority of development sites are the responsibility of private certifiers or there is a high rate of complaints against certifiers.

It is noted that poor conduct by private certifiers was and still is encouraged by the conflict of interest inherent in the system of private certification – certifiers are exercising a public duty in relation to the safety of buildings however are being paid in a private capacity by the building owner. To address these problems, the *Environmental Planning and Assessment Act* was amended in 2008 to strengthen the compliance and enforcement powers of councils and the BPB. However, these provisions cannot overcome the inherently flawed model of certification that has been adopted in NSW.

Regulatory oversight by BPB of council certifiers

The BPB is proposing to extend the same disciplinary provisions as well as a (modified) model of accreditation to individual council certifiers. The proposal ignores the very different regulatory and management frameworks within which council certifiers operate, and appears to be based on a number of untested and false assumptions. These include:

- that there are extensive and systemic problems with existing council certifiers,
- an accreditation scheme will 'fix' these unidentified problems; and
- council certifiers, although already subject to a range of statutory and administrative disciplinary procedures, should also be subject to the same regulatory oversight by the BPB as private certifiers.

There are distinct and important differences between council certifiers and private certifiers which need to be recognised. Local Government has various systems of accountability that are not found in the private certification system. The proposed changes fail to recognise these systems and duplicate

reporting and disciplinary systems that currently exist within the Local Government sector. For example, council officers are:

- Responsible to and delegated powers from the General Manager under the *Local Government Act*.
- Required to abide by the Code of Conduct under the *Local Government Act*.
- Subject to the internal accountability and disciplinary provisions of Council.
- Through the general manager, subject to the investigation and review provisions of the Ombudsman, the ICAC and the Department of Local Government.

The proposal to extend the regulatory oversight of the BPB to council certifiers raises the risk of council officers being placed in a situation of ‘double jeopardy’ – subject to two different complaints and disciplinary procedures in relation to the one action or development.

In addition, council officers already are required to abide by the provisions of the Code of Conduct under the *Local Government Act* and have been employed by councils following checks on their suitability for employment. The proposed regulatory changes will require council certifiers to also abide by the BPB’s own code of conduct and satisfy the requirements of a ‘fit and proper’ person as part of the accreditation process. The BPB provisions duplicate those in the *Local Government Act* and require council certifiers to respond to two different and parallel systems of reporting and accountability.

Requiring council officers to be accountable to two ‘masters’ operating under different legislative and procedural systems is a very poor governance model.

Proposed accreditation scheme for council certifiers

The BPB has provided no justification for introducing this model of accreditation for council certifiers. There has been no evidence presented of widespread and systemic problems with council certifiers and no analysis of the likely costs and benefits of the proposed scheme.

The LGSA accept that certifiers in NSW – whether employed by a government agency or privately – should be appropriately qualified and experienced. However, it is questionable whether the proposed accreditation scheme is the right model given the large cost burden it will impose on councils, its significant workplace impacts and its impact on the provision of certification services to the NSW community, particularly in rural areas.

It is incumbent on the BPB to:

- Document the nature and extent of any existing problems with council certifiers in relation to their qualifications, performance and conduct.
- Clearly state what is to be achieved (benefits) by the accreditation of council certifiers – achieving a ‘level playing field’ is not sufficient of itself to justify the introduction of an overly complex, bureaucratic and onerous accreditation scheme.
- Undertake a full benefit-cost analysis of the proposed accreditation scheme and regulatory provisions.

Cost to councils

Local Government in NSW employs around 900-1,000 building surveyors who undertake a large proportion of the certification work, particularly outside the metropolitan area. The proposed scheme, by largely shifting responsibility for the accreditation process from the BPB onto councils, will impose significant financial costs on councils.

Councils will have to bear the costs associated with:

- Undertaking the objective assessment of each officer's qualifications, experience and suitability and providing appropriate supporting documentation for each officer. These assessments are lengthy and time consuming exercises and will require a considerable amount of senior staff time and effort to complete.
- Undertaking the subjective assessment of each council officer. While this cost is being subsidised in 2009, there is no guarantee that this cost will continue to be paid by the BPB. As most councils would not have staff with the necessary skills, in the future they would need to engage external consultants on a fee for service basis.
- Paying the initial and annual accreditation fee of existing council officers with no guarantee that the fee of \$250 will not rise significantly after this year.
- Paying the costs associated with additional training or qualifications needed by council officers to attain and maintain accreditation grades required by councils to carry out their existing duties.
- Reassigning, redeploying or making redundant officers who cannot meet the accreditation requirements, with associated industrial implications.
- Any additional insurance costs.
- Additional record keeping and reporting requirements of the BPB in relation to the employment of certifiers and complaints against them.

Without consolidated and comprehensive information about the existing qualifications, experience and competencies of council officers it is not possible to quantify the additional costs imposed on councils in the implementation and ongoing management of the proposed accreditation scheme. However, it is clear that it will be significant.

In 2009 councils will be required by the State Government to implement a range of planning reforms, many of which will have significant impacts on councils' costs, resources and service levels e.g. NSW Housing Code, cap on development contributions, introduction of planning panels. There is little or no recognition at the State level of the cumulative impact of these changes on councils' finances and resources. The lack of a cost analysis for the accreditation scheme and short time frame allowed for its implementation (November 2009) is another example of the State Government's hasty, ad hoc and uncoordinated approach to planning and building reform in NSW.

Are the proposed accreditation requirements necessary and appropriate?

It is possible that a very large proportion of building surveyors currently working in councils will not readily meet the accreditation requirements of the BPB's proposed scheme. This has serious implications for councils in terms of costs and the provision of certification services to the community. Given that councils have been providing this service to their communities for many years, with no evidence of extensive or systemic problems, it is questionable whether this or any accreditation scheme is required.

Rural councils with limited staff are likely to be most impacted by the accreditation requirements. In many cases they will not have the ability to reassign duties to other officers, will not have access to private certifiers or only at a significant higher cost to council, or will need to invest significant resources in training programs simply to meet what could be considered inappropriate and unnecessary accreditation requirements.

What are the impacts on councils' responsibilities?

Senior management of council need the capacity and flexibility to manage their workforce to meet their regulatory and other responsibilities.

Council building surveyors are responsible for providing a range of services beyond certification and inspections. These include regulatory duties and advisory services to other areas of council as well as

members of the public. In order to meet the accreditation requirements of the proposed scheme council certifiers must spend at least 40% of their time on certification work. This requirement, given the varied responsibilities of council building surveyors, will:

- disadvantage those officers primarily assigned to regulatory work;
- restrict the ability of managers to allocate work in response to regulatory requirements and customer demands; and
- disadvantage smaller councils who may not be able to attract or keep their building surveyors if council officers cannot obtain an appropriate grade of accreditation or cannot maintain that grade.

The 'conflict of interest' provisions contained in the *Building Professionals Act* prohibit the same certifier from being involved in providing advice to applicants as well as certifying the development. These provisions are likely to pose problems for councils, particularly in rural areas. Smaller councils often employ or share the one building surveyor who is responsible for providing advice, undertaking certification and inspection services and carrying out council's regulatory responsibilities. Under the BPB conflict of interest provisions, the officer would be precluded from providing the full range of services. Given the lack of private certifiers in rural NSW, it will be problematic and costly for councils to maintain their current range of services.

It is appreciated that the conflict of interest provisions are a means of reducing the risk of corruption in the certification process. However the BPB needs to consider its impact on small, rural councils and whether there are alternative means of achieving these objectives.

Conclusion & Recommendations

The LGSA strongly opposes the regulatory amendments and accreditation scheme for council certifiers that have been proposed by the BPB. The LGSA position, in relation to the current proposals and timeframe, is that council certifiers should not be individually accredited by the BPB under the proposed scheme. If the BPB wishes to extend accreditation to the Local Government sector, then council itself should be the accredited body.

The LGSA supports improvements to the system of certification in NSW. However it is critical that the BPB develop a practical, evidence-based and cost effective strategy to achieve this objective. The BPB needs to:

- document the nature and extent of any problems with respect to council certifiers— no data or evidence has been provided in these current proposals;
- gather comprehensive and consolidated information on the 'gap' between existing qualification and skill levels of council certifiers and an agreed set of accreditation requirements;
- develop a practical and cost effective strategy in consultation with Local Government to transition certifiers in an appropriate time frame.

Discussions about the accreditation of council certifiers can then progress in the context of, rather than in isolation from, a strategic framework for certification services in NSW.