

## **Accreditation of Council Certifiers**

**A no-holds-barred diatribe  
by depa against the latest in  
a long line of stupid, half-  
baked and misconceived  
ideas.**

A response by the Development and Environmental Professionals'  
Association to the DIPNR July 2004 discussion paper

August 2004

## **Cutting the Red Tape? Or protecting the red faces?**

The recommendations of the Campbell Inquiry continued to cover-up the misconceived implementation of a private certification option. Introduced in 1998, the system was ineffectually managed by Planning NSW. Complaints about private certifiers were ignored. This was evident in submissions to the Campbell inquiry and remains the case two years later.

The recommendation of the Campbell inquiry to create a common licensing and audit regime for private certifiers and council staff attempts to distract us from the folly inherent in the conflict of interest of a certifier being paid for by the developer.

The discussion paper “Accreditation of council certifiers” continues to protect the government and, now, DIPNR, from the folly of the original decision, the failure to properly manage it and to act on complaints against errant certifiers.

The Discussion paper is written by presuming the system of private certification has sufficient external oversight, proper internal management of complaints and mechanisms to ensure that only properly experienced, qualified and capable people do the work. It also presumes that councils haven’t been ensuring that certificates issued under their authority have been issued by competent or qualified people.

All this is wrong.

## **What’s so offensive about the discussion paper?**

The paper ignores some fundamental facts and it does so for political effect. It ignores:

1. The fact that councils have been managing standards of construction for almost one hundred years and have been doing so, over that time, despite the failures or absences of builders licensing regimes, dodgy builders, get-rich-quick developers and amateur owner-builders with generally acceptable outcomes.
2. The fact that elected councillors and general managers have competently and effectively exercised their role as an employer to make judgments about how the work to be done by council staff should be done.
3. The fact that below the oversight of the council and the general manager, layers of control in building/development departments provide supervision sufficient to ensure competent people do competent jobs and at a level consistent with their competency.

4. The fact that councils have mentored, provided training, encouragement, discipline and control to ensure high levels of expertise in carrying out their certifying functions.
5. The fact that the private certification system can never, ever hope to match Local Government in the provision of these levels of supervision and control.

It also ignores the history of building control.

It presents the history of “certification” as having started in 1998 – to the extent that DIPNR’s Executive Director, Office of the Director General, at the DIPNR Local Government Planning Reform Workshop on 30 August presented a “history of certification” slide show that started in 1998.

What happened to the last 90 years?

### **Why respond to the discussion paper?**

We could cynically say that we do so, knowing our views are not necessarily popularly received (and haven’t been since we opposed the ludicrous system that a developer can have a financial relationship with the person charged with the responsibility of agreeing that the person who is giving them money is actually also complying with conditions of consent, since it was first raised in the 1980’s) to set ourselves up for “I told you so” moments in the future.

But while we find the Discussion paper offensive, superficial, flimsy, a distortion of history and wrong in many areas, we respond to the invitation from the Minister assisting the Minister for Infrastructure and Planning that “your input will help in the design of an effective accreditation framework for councils”.

### **The concept of the “level playing field”**

There can never be a level playing field to regulate private certifiers and council certifiers.

There are two games being played here and the distinction between the two games needs to be recognised. Soccer and cricket are two sports with some superficial similarities – two teams play each other, there are eleven players in each team, someone wins and someone (usually) loses, there is a ball involved, some players get injured, others pretend to be injured and both provide periods of tedium for spectators.

No one would suggest that there can be created a level playing field for two such disparate games - notwithstanding the features in common.

Yet, in one of their worst recommendations, the Campbell Inquiry did precisely this on what they perceived to be the common features of private certifiers and council staff.

Private certifiers and council officers are playing two entirely different games.

A private certifier, often working alone, without supervision, control, or any other professional for guidance, is paid directly by the developer. Even in larger organisations, where a number of private certifiers might work as employees, any mentoring, supervision and control falls well below those controls exercised in council.

We know, because we have spoken to those who have come back to work at councils after a flirtation with the dark side, and they tell us that its all about speed, getting the job done, getting the account out and getting onto the next job and the next account.

The interests of the community don't come into it.

After all, councils operate for the public and community good and the private sector operates to make a profit.

The concept of trying to create a level playing field needs to be rejected.

Please note: The Campbell Inquiry didn't actually use this expression. As far as we can tell, it was used in a council submission quoted on page 112 of the Committee's report where the complaint was made that the playing field filed was "sloped" in favour of the private option – where, amongst other things, the council's charges were regulated and the private certifier wasn't. It is now used only by the private certifier lobby groups – usually those with the vested but undisclosed interest of hoping to sell training to those who may be accredited under this proposal.

### **What can councils do that private certifiers can't?**

Councils employ building surveyors and planners and other professionals in a way intended to ensure that work is allocated to people with the experience and expertise to do it properly.

Even a modest-sized council will have staff with responsibilities for a general area or district, employees who supervise them as either team leaders, supervisors, or seniors, managers who, in turn, supervise that layer and a director responsible for the whole operation.

The director is responsible to the general manager and the general manager to the elected council.

There are so many layers of supervision that councils are more familiar with being attacked for having too many people watching other people working.

Councils and council staff can't win. Attacked by some who hate Local Government for having too many employees watching other employees and then having this supervision ignored by some of the others who hate Local Government (like the people who wrote this discussion paper) in recognising the value of that supervision?

Why do councils get attacked for having too many people supervising and then attacked with the suggestion that there are not enough and that some Government board or authority should assume some role?

## **Five good reasons why accrediting council certifiers would be a waste of time and money**

### **1. How much supervision and control is enough?**

Accreditation of individual certifiers will not provide any benefits in ensuring quality certification. Accreditation will be an additional and parallel system which will operate independent of the checks and balances that operate in every council. It will not add value to a process already well-supervised and controlled.

### **2. Who needs more parallel accountability?**

Accreditation will provide an additional opportunity for complaint, complaint handling and disciplinary action against a council certifier.

Council certifiers are already subject to these processes and, given the failure of BSAP/SAC/whoever-is-now-in-charge, to properly deal with complaints against private certifiers (even since the rockets from the Campbell Inquiry) the processes adopted in councils are more effective, faster and provide better results for the community.

### **3. The costs are prohibitive.**

The discussion paper has not considered the costs that would be associated with the accreditation process for council staff. Many councils have, because they are aware of statements by DUAP/DIPNR functionaries that the Government needs council officers accredited to fund the Building Professionals' Board.

This was said, and it is a disgrace.

Our consultation with councils reveals that there will be a number of costs payable which have not been considered in the discussion paper and which will have a damaging effect on council finances. They are these:

- The current annual individual fee for accreditation is \$1900.
- The time involved in preparing an application for accreditation may be more than one working week. We have costed this at around \$1500 – average employee plus on costs.
- The time and cost of travelling to Sydney for the initial accreditation (recognizing that the State Assessment Committee was only dealing with six or so applications for accreditation in a day) – anywhere between \$500 to \$1000 depending on distances travelled, accommodation and the time lost at work.
- Cost of training required for continued accreditation. We have costed this at anywhere between \$500 to \$1000.
- Cost of time involved in this training – time at training, time lost at work, potential travel and accommodation - say, \$1500.
- Impact of the additional accountability that arises from the role of the Administrative Decisions Tribunal (ADT) – the tribunal currently charged with complaints and disciplinary matters for private certifiers - on a council's insurance.

This is a range of costs of anywhere between \$6000 to \$10 000 for each certifier.

Option A in issue one – where anyone who signs anything would be accredited could see 1000 or more council staff – building surveyors, planners and engineers requiring accreditation.

This would be a cost to local government of between \$6 million and \$10 million each year.

#### **4. It will distract the BPB from the real job.**

The real role of the Building Professionals' Board is, for the first time, to establish an effective system of monitoring, control and regulation of private certifiers. There has never been proper regulation, accreditation, supervision and complaint handling since the private certification option was introduced in 1998. This was the reason the Campbell Inquiry was established and it should be the primary role of the Building Professionals' Board.

Blacktown Council has made fourteen official complaints against private certifiers since April 2000. Blacktown has suffered more at the hands of poorly regulated private certifier than most councils but, even then, the fourteen complaints are the most extreme of the numerous examples of poor work performance detected.

Only two of the fourteen complaints have been resolved.

The longest outstanding complaint was filed in April 2000. It is regarded by Blacktown Council as the most serious complaint of the fourteen lodged because it deals with a private certifier failing in the provision of fire sprinklers in an industrial building. There are life and death issues involved here.

Someone needs to get their finger out, deal with the complaints already made against the corruptible and questionable private certification system and then, once that has happened, look to the future.

### **5. The effect of a central point for complaint.**

It surely can't be contemplated (but you never know) that this system will allow complaints against those accredited to be filed only and exclusively with the BPB. This would make no sense at all. What would happen to a council's right to manage their own staff, to control and, where necessary, discipline them?

Would it be proposed that councils would lose this control?

### **A positive proposal!**

Almost begrudgingly, the Discussion paper acknowledges the supervisory role in councils and the benefits that flow from it.

We propose that the Minister/Ministers/Government abandon the current preoccupation with the accreditation of individual council employees and, instead, accredit the councils. Each council would be accredited to carry out a range of activities and functions and councils would exercise the right to make judgments about who does what.

Councils would continue to supervise, monitor and regulate their staff to ensure a quality result for the community.

The BPB would have a role in monitoring the accreditation of councils, how supervision, training and mentoring etc operated and a role in carrying out random audits of certification by council staff.

This would have a number of immediate benefits:

1. It would allow the BPB to establish a regime of accreditation and control for the 200 private certifiers.
2. It would remove the pressure from the BPB of the prospect of increasing the current number of 200 accredited certifiers by anything up to five or sixfold – consistent with discussion paper option A.

3. It would provide a regulatory, monitoring and auditing role of council certifiers.
4. It would allow the BPB to ensure that councils properly regulate and control their staff involved in development control.

### **Almost finally...**

As a creature of NSW Government legislation, Local Government suffers whenever Government changes its mind about what is fashionable.

In the establishment of the 1993 Local Government Act, it was apparently fashionable for Government to decide that there should be no regulation about what type of employee, what level of qualification was necessary for council staff.

In the pre 1993 Local Government Act, Ordinance 4 established qualifications committees which determined appropriate levels of qualifications for positions like town and shire clerk, health surveyor, building surveyor, engineer, planner etc.

These Ordinance 4 Committees considered qualifications and the experience and competency of the applicant as evidenced by what we would now describe as workplace assessors. In brief, an applicant arrived at the committee, with a qualification as an entry point, and references from those capable of making an assessment of their competency.

How simple but effective this system looks with hindsight.

In 1993 with the new Local Government Act the Government's view was that this was now unnecessary and that councils should have an absolute discretion to make their own appointments.

Now the wheel has turned. Apparently it is again fashionable for the Government to start to dictate to councils the sort of qualifications and competency which they believe appropriate for council employees.

The system being developed by the Building Professionals' Board Working Party (and initially for the first five meetings with no-one at all representing local government interests, employees or employers) relies upon the National Competency Framework. This framework has been rejected by the overwhelming majority of councils in NSW (we know only of Marrickville which has adopted a variation of the National Competency Framework) for progression of their employees in the council salary systems.

The National Framework was rejected because it was regarded as superficial and flimsy (a bit like the Discussion paper) and lacking sufficient rigour to distinguish between different levels of competency. Precisely the sort of observations that should have had the BPB looking at other alternatives.

For reasons we still don't understand, but believe can be explained by bureaucratic and governmental bloodymindedness, the BPB working party lumbers on to develop an accreditation system using this framework – a framework already renounced by councils because of their lack of confidence in it and in a climate where depa, the Local Government Association and the Shires Association Executives have resolved unanimously to ask the responsible Minister or Ministers to intervene and stop the process until such time as Local Government can have a say.

We recommend, if the Government is to continue to contemplate the accreditation of council certifiers, the restoration of a system similar to the Ordinance 4 committees.

### **And finally...**

No-one, apart from DIPNR and the private certifier lobby groups, ever uses the expression “council certifiers”.

They are council staff, council employees or council officers. They discharge public responsibilities and “certifying” compliance of things is usually only one of many important roles.

Why does Local Government have to fall into line with an expression that is foreign to the industry, misleads the community that there is a similar job being done by either the private sector or councils and which doesn't properly describe anyone's job?

Once again, DIPNR finds itself too close to the private certifier lobby groups.

**Ian Robertson**  
**Secretary**  
**depa**  
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ph 9712 5255  
[ian@depa.net.au](mailto:ian@depa.net.au)