



PLANNING SYSTEM

Act and regulation changes

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| Circular | PS 09-002 |
| Issued | 16 February 2009 |
| Related | PS 08-006; 08-008; 08-010; 08-011; 09-003 |

Commencement of provisions – new inspection requirements

The purpose of this circular is to advise councils, accredited certifiers and the community of the provisions of the *Environmental Planning and Assessment Amendment Act 2008*, *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009*, *Building Professionals Amendment Act 2008*, *Building Professionals Amendment (Inspections and Penalty Notices) Regulation 2009* and the *Strata Schemes* legislation relating to new inspection requirements, which commence on 2 March 2009.

Introduction

The *Environmental Planning and Assessment Amendment Act 2008* and the *Building Professionals Amendment Act 2008* (the Amendment Acts) received assent on 25 June 2008. Along with other matters, the Amendment Acts introduce significant changes to the planning and certification systems in NSW and were the subject of significant community consultation prior to their passage through Parliament. The provisions in the Amendment Acts are being commenced in stages—as the necessary regulations and guidelines are prepared, and following consultation with stakeholders on aspects of the reforms.

Various provisions of the Amendment Acts commenced on 1 August 2008, 1 September 2008 and 3 November 2008 as outlined in circulars PS 08-006, PS 08-008, PS 08-010 and PS 08-011, respectively.

The next group of provisions, together with supporting regulations, were gazetted on 6 February 2009 and are due to commence on **2 March 2009**.

The changes summarised in this circular relate to certification matters, including the introduction of new mandatory critical stage inspections and new inspections prior to the issue of certain certificates; authorising certain persons to carry out these inspections; and requiring certain records to be made of these new inspections.

These changes are part of a series of reforms to the certification system that will place clearer requirements on certifying authorities and consumers.

In addition, the following also commence on 2 March 2009:

- new penalty notices in respect of specified offences
- new stop work order
- prescribed conditions of development consents and complying development certificates in relation to proposed development involving certain excavation that affects adjoining premises.

These latter provisions are summarised in circular PS 09-003.

Councils and accredited certifiers should familiarise themselves with the requirements of the Amendment Acts and supporting regulations—the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* and the *Building Professionals Amendment (Inspections and Penalty Notices) Regulation 2009*.

Amendments to the EP&A Regulation

Changes to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) that will commence on 2 March 2009 are as follows.

New inspection prior to issue of a complying development certificate

A new clause 129B is inserted into the EP&A Regulation requiring a certifying authority to inspect the site of the development before a complying development certificate can be issued. This inspection may be carried out by the certifying authority, the council or an accredited certifier who is not the certifying authority.

Under savings and transitional provisions, this new inspection is not required if an application for a complying development certificate was made before 2 March 2009.

Record of site inspections for clause 129B

Clause 129C is inserted into the EP&A Regulation requiring a council or accredited certifier to make a record of each inspection carried out for clause 129B.

The record must include the following details:

- the date of the application for the complying development certificate
- the property address at which the inspection was carried out
- the type of inspection
- the date on which the inspection was carried out
- if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council
- if the inspection was carried out by an accredited certifier, the identity and accreditation number of the accredited certifier who carried out the inspection
- if the inspection was carried out by an accredited certifier on behalf of an accredited body corporate, the accredited certifier's identity and accreditation number
- in the case where the application for the certificate is for works affecting an existing building, the current fire safety measures in the existing buildings that will be affected by the proposed development
- whether or not the plans and specifications accompanying the application for the certificate adequately and accurately depict the existing site conditions
- any features of the site, or of any building on the site, that would result in the proposed development the subject of the application for the complying development certificate:
 - not being complying development, or
 - not complying with the Building Code of Australia.

If a council or accredited certifier carries out the inspection on behalf of the certifying authority, they are required, within two days after carrying out the inspection, to provide a copy of the record to the certifying authority.

New inspection prior to issue of a construction certificate

Clause 143B is inserted into the EP&A Regulation requiring the certifying authority to carry out an inspection of an existing building before a construction certificate for development on a site which affects the building can be issued.

Under savings and transitional provisions, this new inspection is not required if an application for a construction certificate was made before 2 March 2009.

Record of site inspections for clause 143B

Clause 143C is inserted into the EP&A Regulation requiring a council or accredited certifier to make a record of each inspection carried out for clause 143B.

The record must include the following details:

- the registered number of the relevant development application
- the property address at which the inspection was carried out
- the type of inspection
- the date on which the inspection was carried out
- if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council
- if the inspection was carried out by an accredited certifier, the identity and accreditation number of the accredited certifier who carried out the inspection
- if the inspection was carried out by an accredited certifier on behalf of an accredited body corporate, the accredited certifier's identity and accreditation number
- the current fire safety measures in the existing building the subject of the inspection
- whether or not the plans and specifications accompanying the application for the construction certificate adequately and accurately depict the condition of the existing building the subject of the inspection
- whether or not any building or subdivision work authorised by the relevant development consent has commenced on the site.

If a council or accredited certifier is carrying out the inspection on behalf of the certifying authority, they are required, within two days after carrying out the inspection, to provide a copy of the record to the certifying authority.

New critical stage inspection for swimming pools

Clause 162A is amended to insert a new mandatory critical stage inspection for swimming pools. An inspection of the building work is required to be carried out after the construction of the swimming pool is completed and the barrier (if one is required under the *Swimming Pools Act 1992*) has been erected and before the pool is filled with water.

Under savings and transitional provisions, this new inspection is not required in relation to building work for which the application for the relevant complying development certificate or construction certificate was made before 2 March 2009.

New critical stage inspection for footings

Clause 162A is amended to require inspections of the building work for class 2–9 buildings under the Building Code of Australia following any excavation for, and before the placement of, any footings.

Under savings and transitional provisions, this new inspection is not required in relation to building work for which the application for the relevant complying development certificate or construction certificate was made before 2 March 2009.

Removal of mandatory critical stage inspections

Previously under the EP&A Regulation, an inspection was required to be carried out at the commencement of building work for developments where a principal certifying authority was required to be appointed (clauses 162A(4)(a), (5)(a) and (6)(a)).

This requirement to carry out a mandatory critical stage inspection at the commencement of building work has been removed as a result of the introduction of clauses 129B and 143B of the EP&A Regulation.

Referral of certain plans and specifications to the NSW Fire Brigades

Clause 144 of the EP&A Regulation has been amended to specify that after receiving an application for a construction certificate for a building to which this clause applies, the certifying authority must forward certain plans and specifications as listed in clause 144(2) to the Fire Commissioner of the NSW Fire Brigades within seven days.

Previously, this clause required such plans and specifications to be forwarded 'as soon as practicable'.

Record of inspections conducted under section 109E(3)

Clause 162B(2) is amended to require a copy of the record of inspection conducted under section 109E(3) to be provided to the principal certifying authority (PCA) within two days after the record is made if the inspection is carried out by an accredited certifier or council who is not the PCA. Previously this clause required a copy of the record of inspection to be forwarded to the PCA without a specified time frame.

Progress inspection unavoidably missed

Clause 162C(4) is amended to require an accredited certifier or council who is not the PCA, but who was required by the PCA to conduct an inspection under clause 162C(1) to inform the PCA within two days of becoming aware of an inspection that was unavoidably missed under clause 162C(1) and of the circumstances causing the inspection to be missed. Previously, this clause required such information to be forwarded to the PCA 'as soon as possible'.

Amendments to the strata schemes legislation

Changes to the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986* were gazetted on 12 December 2008 to require certifying authorities to carry out inspections of the relevant building before a strata certificate can be issued.

The matters to be inspected are set out in the Strata Schemes (Freehold Development) Amendment Regulation 2008 and Strata Schemes (Leasehold Development) Amendment Regulation 2008, in clauses 29A and 30A, respectively.

As construction of the building nears completion, or after it has been completed, a council or an accredited certifier must inspect the building, and the common property areas around the building, so as to be satisfied that:

- the floors, external walls and ceilings depicted in the proposed strata plan for the building correspond to those of the building as constructed
- the floors, external walls and ceilings of the building as constructed correspond to those depicted in the building plans that accompanied the construction certificate for the building
- any facilities required by the relevant development consent (such as parking spaces, terraces and courtyards) have been provided in accordance with those requirements.

Under savings and transitional provisions, these provisions do not apply to applications for strata certificates made before 2 March 2009.

Amendments to the BP Regulation

Authorities for accredited certifiers

The authorities conferred on certifiers accredited in categories A1, A2, A3, B1 and D1 under the accreditation scheme made under the *Building Professionals Act 2005* have been amended to enable relevant certifiers to carry out the new inspections under clauses 129B and 143B of the EP&A Regulation and under the strata schemes legislation.

Under savings and transitional provisions, all accredited certifiers who hold an accreditation in one of these categories when the new inspection requirements commence on 2 March 2009, will be authorised to conduct the relevant new inspections.

Further information

The Amendment Acts, amending regulations and commencement proclamation are available at www.legislation.nsw.gov.au.

If you require more information on the certification changes outlined in this circular, please contact the Building Professionals Board on (02) 9895 5950 or email bpb@bpb.nsw.gov.au.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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