

## **BUILDING WORK AND PRIVATE CERTIFICATION – FREQUENTLY ASKED QUESTIONS**

### **Does all building work require a development consent?**

No. Some minor and small scale building works fall within the definitions of “exempt” or “complying development” and require no approval or need only issue of a Complying Development Certificate. The details of building works that is either “exempt” or “complying” can be found by reference to [State Environmental Planning Policy \(Exempt and Complying Codes\) 2008](#). Note: in some foreshore areas of Mosman “complying” development allowed under the General Housing Code may not be carried out without a development consent. Details may be obtained by contacting Council’s Duty Planner on 02-9978-4172.

### **What needs to happen if approval is required for building work?**

Where development consent is required for building work, no work can commence until Council has granted consent, a construction certificate has been issued and a Principal Certifying Authority (PCA) has been appointed. Council must be given at least two days notice of the commencement of the building work.

If building work is to be carried out as “complying” development, no building work is to commence until a Complying Development Certificate has been issued and a Principal Certifying Authority (PCA) has been appointed. Council must be given at least two days notice of the commencement of the building work. Council does not receive any notification when “exempt” work is carried out.

### **What is a PCA?**

A PCA is the Principal Certifying Authority and one must be appointed prior to the commencement of any building work in accordance with a complying development certificate or a development consent and construction certificate. The PCA can either be an accredited Council certifier or a private accredited certifier. The owner selects and appoints the PCA.

### **What does the PCA do?**

The principal roles of the PCA are:

1. to ensure compliance with the development consent and the construction certificate or the complying development certificate;
2. to ensure compliance with all conditions;
3. to ensure compliance with the *Building Code of Australia*;
4. to carry out all the required inspections associated with the building works; and
5. to issue the occupation certificate when all works are completed.

### **What is the Council’s role?**

Council’s role in building and construction work varies depending on whether or not Council has been appointed the PCA. If Council is appointed the PCA, it becomes the building inspector and must carrying out all the roles of the PCA. If a private certifier is appointed the PCA, it is not Council’s responsibility to ensure building and construction compliance. However, Council retains its regulatory role and enforcement powers and will take action if and when required. It should be noted Council has a wide discretion and will not involve itself in matters which are the responsibility of the PCA or where complaints can be resolved by other means.

### **What is the role of a private certifier when they are appointed the PCA?**

When a private certifier is appointed the PCA they take responsibility for the development site and are required to fulfil all the responsibilities of PCA. They have statutory responsibilities and authority, including the matters they are required to consider under [Section 109E of the Environmental Planning & Assessment Act 1979](#) (EP&A Act) and the works they can approve in lieu of Council, as listed under [Clause 161 of the Environmental Planning & Assessment Regulation 2000](#) (Regulation) including earthwork, stormwater drainage work, landscaping work, erosion and sediment control work, excavation work, mechanical work, structural work, hydraulic work and external finishes of a building. Private certifiers have some enforcement powers as the PCA. They have the power to issue a ‘notice of intention to issue an order’ under [Section 109L of](#)

[the EP&A Act](#) setting out the proposed terms of an order and the proposed period for compliance. A copy of any 'notice of intention' issued by a PCA must be provided to Council for the Council to decide whether it will issue the order.

### **What is Council's role when a private certifier has been appointed the PCA?**

When a private certifier has been appointed the PCA, the Council generally becomes the "keeper of the records" and is not directly involved in the inspection of the development site.

By not being the PCA it means that Council does not have ready access to various professional reports that may be produced during the construction phase, including structural engineer's certification and survey information. Such information and reports are not required to be submitted to Council until the final occupation certificate has been issued. This is a significant impediment to Council's ability to respond to general enquiries on a development site. Nevertheless, Council retains its regulatory role and enforcement powers and will take action if and when required; however, Council has a wide discretion as to what, if any, action to take.

### **What should I do if I have a complaint about building works or a development site?**

Any complaints in relation to building works or a development site should be referred to the PCA in the first instance because the PCA is the responsible person and has access to the relevant information. Also, the PCA is the person with the most association and familiarity with events occurring on the applicable site. In many cases the PCA may be able to resolve the complaint without the need for enforcement action.

Contact details for the PCA are provided on a sign at the front of the development site. If you are unsure who the PCA is or if you want to know if approval has been granted for the works, please call Development Services Support Officer staff on 9978-4110. Contact details for certifiers can also be found on the Building Professionals Board's (BPB) website at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au). Letters and emails received by Council for development sites where a private certifier is the PCA will be referred to the PCA for consideration and investigation.

### **When will Council act on complaints about building works or a development site under the control and supervision of a private certifier?**

Council's Compliance and Enforcement Policy identifies the matters to be taken into account by Council in deciding whether to take enforcement action and the nature of such action. This also applies to complaints about building work. The Council will only act on complaints received in relation to building works and development sites where a private certifier is appointed the PCA when:

1. The work threatens life, safety or damage to property or the environment at the time of the complaint and immediate action is required;
2. The alleged breach is substantial and there is a likely environmental impact;
3. The complaint relates to work that does not form part of a development consent or other approval which is not the responsibility of the PCA;
4. Where the PCA's response to the complaint is considered inadequate or Council does not agree with the PCA's position;
5. Penalty infringement notices are to be issued and/or prosecution proceedings are to be commenced;
6. The complaint relates to breaches of 'housekeeping' or environmental conditions of consent that are generally enforced by Council's Rangers including hours of work, footpath and roadway obstructions, odours and fumes, noise, dust, sediment control and discharges; and/or
7. It is in the public interest.

The factors that Council will take into consideration to determine if a PCA's handling of a complaint is adequate includes:

1. The timeliness of the investigation, having regard to the seriousness of the complaint;
2. Whether the certifier demonstrates a genuine commitment to address the issues;

3. The appropriateness of the action taken, including whether a physical inspection has been undertaken and whether any professional reports have been relied on; and
4. Whether the certifier keeps the customer and Council informed.

#### **What are the enforcement powers of Council?**

Council has a range of enforcement powers under the *EP&A Act* where compliance with a development consent or complying development certificate is not occurring.

The main compliance power is [section 121B of the EP&A Act](#), which authorises Council to issue orders in specific circumstances to persons, requiring them to undertake, or to refrain from, certain actions. A stop work order under section 121B can be issued by Council to stop building work where the provisions of the EP&A Act have been breached or the works affect the support of adjoining properties.

[Section 121H\(1\) of the EP&A Act](#) provides that, in cases not involving an emergency, Council must first give to the person to whom it proposes to give an order, a notice setting out the proposed terms of the order and the proposed period for compliance. The notice must also indicate that the person may make representations as to why the order should not be given. Council may also issue penalty infringement notices for many breaches of the *EP&A Act* or Council can elect to commence Court proceedings.

All enforcement action taken by Council will be in accordance with Council's adopted Compliance and Enforcement Policy, which can be found on Council's website at [www.mosman.nsw.gov.au](http://www.mosman.nsw.gov.au). Any person may, under [section 123 of the EP&A Act](#), bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act.

#### **Does the Council become the PCA when it exercises its enforcement powers?**

No. Any enforcement action by Council does not affect the status of the existing PCA.

#### **What should I do if I have a complaint about a private certifier?**

The Council is not the regulator of private certifiers. Any complaints about the conduct or actions of a private certifier must be directed to the Building Professionals Board (BPB). More information can be found about lodging a complaint on Council's website or the BPB's website at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au) or by calling the BPB on 02-9860-1800.

#### **Can Council take on the role of the PCA?**

Council can only take on the role of PCA but only if it is appointed by the property owner. More information on the replacement of a PCA can be found at the BPB's website at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).