

Principal certifiers and Council



Information on the role of public certifiers and Council in relation to building works and development sites.

The extent of Council's role in regulating building work and addressing neighbours' concerns depends on whether Council has been appointed the principal certifier (PC) for a development.

The principle roles of the PC are to:

- ensure compliance with the complying development certificate or development consent, and construction certificate
- ensure compliance with the Building Code of Australia
- carry out required inspections associated with the building works
- issue the occupation certificate when all works are completed.

A PC must be appointed prior to the start of any building work. The PC can either be a Council accredited certifier or a private accredited certifier. The owner decides who they want as the PC.

In Woollahra Municipality, a private certifier is appointed as the PC on most building sites.

Does all building work require development consent?

No. Minor and small scale building work often does not require approval. This type of building work is identified as exempt development.

State Environmental Planning Policy (Exempt and Complying Codes) 2008 and *Woollahra Local Environmental Plan 2014* specify what is exempt development. Exempt development does not need consent before any work begins and Council does not require any notification when it is carried out.

For more information on whether development consent is required, please call Council's Customer Services or Duty Town Planner on 9391 7000.

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

Where development consent is required for building work, no work can begin until Council has granted consent, a construction certificate has been issued and a PC has been appointed.

If building work is to be carried out as complying development, no building work can begin until a complying development certificate has been issued and the PC appointed.

In both cases, Council must be notified at least two days before the start of the building work.

What is Council's role?

Council's role in building and construction work varies depending on whether or not Council has been appointed as the PC.

If Council is appointed as the PC, Council becomes the building inspector and must carry out all the roles of the PC.

If a private certifier is appointed the PC, it is not Council's responsibility to ensure building and construction compliance.

What is the role of a private certifier when they are appointed as the PC?

When a private certifier is appointed as the PC they take responsibility for the development site and are required to fulfill all roles of the PC.

The PC has statutory responsibilities and authority, including the matters they are required to consider under section 6.5 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*. This includes 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 PC. The PC has authority to advise the builder/owner of complaints and in many cases the PC can resolve complaints without initiating enforcement action.

The PC has the power to issue a 'notice of intention to issue an order' to a builder/owner under section 6.31 of the EP&A Act setting out the proposed terms and period for compliance.

However, only Council can issue a formal order, so the PC must provide Council with a copy of the 'notice of intention' for Council to decide whether to issue the order or take other regulatory action.

What is Council's role when a private certifier has been appointed the PC?

When a private certifier is appointed as the PC, Council generally becomes the keeper of the records, but is not directly involved in the routine inspection of the development site.

When it is not the PC, 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 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.

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

Complaints in relation to building works or a building site should be referred to the PC in the first instance because the PC is the responsible person. Also, the PC is the person with the most association and familiarity with events occurring on the site.

In many cases the PC can resolve the complaint without the need for enforcement action.

Contact details for the PC are displayed on a sign at the front of the building site. If you are unsure who the PC is, or if you want to know if approval has been granted for the works, please call Council's Customer Services on 9391 7000.

Note: Complaints received by Council will be referred to the PC to consider and investigate. Council will notify the complainant of this action and provide the PC's contact details.

What if the PC does not satisfactorily respond to my complaints?

Council does not oversee or have control over private certifiers.

Complaints about the conduct and actions of a private PC must be directed to the Building Professionals Board (BPB), which is the regulatory authority for private certifiers.

For more information go to the BPB website at www.bpb.nsw.gov.au or call 8522 7800.

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

Council will only act on complaints received in relation to building works and development sites where a private certifier is appointed the PC when:

- the work threatens life, safety or damage to property or the environment at the time of the complaint and immediate action is required
- the alleged breach is substantial and there is a likely environmental impact
- the complaint relates to work that may not form part of a development consent and therefore is not the responsibility of the PC
- the PC's response to the complaint is considered inadequate or Council does not agree with the PC's position
- penalty infringement notices are to be issued and/or prosecution proceedings are to be commenced
- 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
- it is in the public interest.

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

- the timeliness of the investigation, having regard to the seriousness of the complaint
- whether the certifier demonstrates a genuine commitment to address the issues
- the appropriateness of the action taken, including whether a physical inspection has been undertaken and whether any professional reports have been relied on
- whether the customer is satisfied with the certifier's response.

What are Council's enforcement powers?

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 9.34 (and Schedule 5), which authorises Council to issue orders in specific circumstances to persons, requiring them to undertake, or to refrain from, certain actions.

Council can issue a stop work order under Schedule 5 to stop building work where the provisions of the EP&A Act have been breached or the works affect the support of adjoining properties.

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 breaches of the EP&A Act or can elect to commence court proceedings.

All enforcement action taken will be considered in accordance with Council's Enforcement Policy available at www.woollahra.nsw.gov.au

For more information about principal certifiers and the building certification process go to Council's website at <https://www.woollahra.nsw.gov.au/building>

This includes Council's brochure *A Guide to Resolving Complaints about Building Works*.



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