CCs and CDCs for work already completed

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<td>To enable occupation certificates to be issued in relation to unauthorised building work in certain circumstances.</td>
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Background

- Unauthorised building work may occur if:
  - changes, such as design changes, occur during construction but for which a modification application under section 96 of the EP&A Act, where required, is not made
  - the applicant fails to obtain a necessary approval (a construction certificate (CC) or complying development certificate (CDC)) before work commences (whether knowingly or unknowingly).

- Decisions are often made to carry out work that has not been approved because the costs of any penalty is insignificant compared to the potential costs of delays when seeking approvals.

- The EP&A Act and EP&A Regulation permit the modification of a CC or CDC.

- The EP&A Act does not permit the issue of a retrospective CC or CDC or a modification of those certificates when:
  - building work has deviated from the approved plans
  - building work is carried out before a CC or CDC is issued.

- The Act and Regulation also do not clearly specify the procedure that should be followed to modify a CC or CDC.

Issue

- An occupation certificate (OC) cannot be issued in relation to unauthorised building work.

- If an OC cannot be issued, often the final payment under a building contract cannot be made. Property vendors are generally required to provide a copy of an OC for the relevant building during the conveyancing process.

- The inability to issue an OC for a building, or part of a building, will delay final financing and conveyancing.

- Currently, the only recourse is for the landowner to apply for a building certificate under the EP&A Act. However, building certificates were not intended to authorise building work that has been deliberately carried out without the necessary approvals being in place, nor do they authorise occupation or use of a building.
Proposed response

Modification of CCs and CDCs
An amendment could be made to the EP&A Regulation to specify the circumstances and the procedure to be followed to modify CCs and CDCs prior to the commencement of any works that are the subject of the modification.

CCs and CDCs for work already undertaken
An amendment could be made to the EP&A Regulation to enable CCs and CDCs to be issued in certain limited circumstances for unauthorised building work, such as where a development consent is in place, a CC has been issued and a section 96 modification has been issued; or where a CDC has been issued and the works are not inconsistent with the original CDC or the environmental planning instrument that applies to the land.

Why?
The proposed responses would:
- clarify the process for modifying CCs and CDCs
- enable CCs and CDCs to be issued for work already completed in certain limited circumstances
- specify the matters to be satisfied before CCs and CDCs can be issued for work already completed
- better enable the timely and efficient completion of building work
- facilitate the issue of OCs and reduce reliance on building certificates.

What do you think?
Click onto the online survey to tell us what you think of the proposed responses and to identify any other options.

The Survey will close by 2 July 2012, so let us know your thoughts before then.