PCA contract for services

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**Background**

- Under the EP&A Act, only landowners can choose the council or an accredited certifier as their certifying authority for building works associated with a construction certificate (CC). A developer or builder may only appoint a certifying authority if they are also the landowner.

- However, there is no such restriction when appointing a certifying authority associated with a complying development certificate (CDC).

- When issuing a CC or CDC, a certifying authority must have the ability to ensure:
  - CC plans are not inconsistent with the development consent
  - the CDC satisfies any relevant environmental planning instrument
  - the building work will comply with the BCA
  - all regulatory matters associated with the issue of the certificate are complied with.

- Similarly, a certifying authority's obligations when appointed as the PCA for building work are to:
  - ensure building works proceed in accordance with any relevant approvals
  - administer any conditions of consent or a CDC that apply to the construction of a building
  - appropriately respond to any complaints or unauthorised building works
  - undertake mandatory inspections and other identified inspections
  - issue an occupation certificate as and when appropriate.

- A certifying authority must avoid any circumstances which may give rise to a conflict of interest and maintain a professional role in accordance with their code of conduct.

**Issue**

- There may be the perception of a conflict of interest when a certifying authority is paid directly by the developer, builder or other applicant.

- Feedback received during the Board’s consultation sessions in indicated that private certifiers have been threatened with non-payment of certification fees unless they issue a particular certificate or do so within a specified time period.

- Certifiers also reported a request to enter into commercial contracts which potentially place obligations on them that are inconsistent with their responsibilities under the EP&A Act and EP&A Regulation.
To ensure they act independently, certifiers must apply statutory requirements without influence by the commercial obligations associated with the approval, construction and completion of building work.

**Proposed response**

The proposed response would:

- require a written contract or agreement between the person who appoints the PCA and the certifying authority, that specifies:
  - details of the development
  - details of the certifying authority and person appointing the PCA
  - the scope of services to be provided
  - the certifying authority’s statutory obligations
  - the statutory obligations of the person who engages the certifying authority and appoints the PCA
  - the required plans and certification documents
  - the mandatory inspections and any other inspections required during the course of building works
  - an extract of the conflict of interest provisions under the *Building Professionals Act 2005* and *Building Professionals Regulation 2007*
  - a schedule of fees
  - the payment of certification fees upon the lodgement of any applications or the appointment of the PCA
  - the signature of the certifying authority and person appointing the PCA.

- require consent authorities to attach copies of Board-approved advice for the public detailing the building certification process and the role of the PCA to development consents and CDCs.

**Why?**

The proposed response will:

- better define and make known the certifying authority’s role and obligations
- increase knowledge of the role of certifying authorities within the general public
- lessen real or perceived conflicts of interest.

**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 **Friday 29 June 2012**, so let us know your thoughts before then.