Part 4A certificates and development consent pre-conditions

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<td>To specify the matters to be the subject of pre-conditions to the issue of a construction or occupation certificate.</td>
<td>Amend the EP&amp;A Act and EP&amp;A Regulation</td>
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Background

- The EP&A Act and Regulation require specified pre-conditions of development consent to be satisfied prior to the issue of a construction certificate (CC) or occupation certificate (OC). The Act does not nominate the types of conditions or the matters that must be satisfied prior to the issue of these certificates.

- The EP&A Act and Regulation specify other matters to be satisfied prior to the issue of a CC or OC.

- Under the EP&A Act, building or subdivision work under development consent cannot commence until, among other things, a CC has been issued. An OC permits the use and occupation of a building.

Issue

- The EP&A Act and Regulation do not nominate the types of conditions that must be satisfied prior to the issue of a CC or OC. These conditions are imposed at the discretion of the consent authority.

- Conditions of development consent included as pre-conditions to the issue of a CC may relate to matters other than the construction or carrying out of the relevant work. Similarly, matters that are included as pre-conditions to the issue of an OC may not relate to whether the building is suitable for use or occupation.

- Depending upon the wording of the pre-conditions, the issue of a CC or OC may be unreasonably withheld. This may result in a deferral of the commencement of the development or delayed settlement of the contract for the occupation of a building, with consequent increased costs.

- While it may be possible to satisfy the required technical matters associated the commencement of work or the occupation of a building, compliance with some pre-conditions may prevent the issue of a staged CC for preliminary building work or of an interim OC to permit the occupation or use of part of a building.

- Certain matters need to be satisfied either during construction or prior to the commencement of certain activities associated with construction. For example, erosion and sedimentation control works, rainwater re-use systems, ancillary approvals associated with activities that occur during construction (i.e. site fencing, stormwater, sewer connections, water supply works) or infrastructure works such as driveways, kerb and guttering, roadworks or footpaths.
Similarly, there is a need to ensure that a development is capable of being completed in accordance with consent. For example, activities associated with the development, such as landscaping features, waste removal services, completion of council infrastructure works, developer charges and/or contributions, creation of covenants or easements or ongoing use plans of management.

Proposed response
One proposed response would be to legislate to make clear:

- the matters that should and should not be the subject of pre-conditions of development consent prior to the issue of a CC or OC
- who is responsible for determining the types of pre-conditions that should apply
- who needs to be satisfied that any pre-conditions have been met
- mechanisms that are available to ensure conditions of consent that are not directly associated with the issue of a CC or OC can be satisfied.

Why?
The proposed response would:

- provide certainty as to the matters that need to be satisfied prior to the issue of a CC or OC
- minimise delays in the issue of CC and OC
- clarify the roles of the consent authority and the certifying authority
- introduce mechanisms to ensure compliance with conditions of consent that are associated with the commencement of building work or the occupation of a building.

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 20 August 2012, so let us know your thoughts before then.