

Guiding Development — Practice Notes

Construction certificates for subdivision

The purpose of this practice note is to outline the legislative requirements for construction certificates for subdivision works. Separate practice notes deal with building work.

What is a construction certificate?

A construction certificate for subdivision work is a certificate to the effect that:

- the design and construction details of the subdivision as depicted in the plans and specifications, are not inconsistent with the development consent
- the conditions of development consent that must be complied with before a construction certificate is issued, have been met
- conditions requiring the provision of security before work is carried out, have been met
- conditions requiring the payment of a monetary contribution before work is carried out, have been met.

The definition of a construction certificate is found at section 109C(1)(b) of the *Environmental Planning and Assessment Act 1979* (the Act) and the above-mentioned requirements are in the Environmental Planning and Assessment Regulation 1994 (the Regulation), clauses 79G and 79H.

Who can issue a construction certificate?

A construction certificate can be issued by either a consent authority or an accredited certifier. The consent authority is either the council or the Minister for Urban Affairs and Planning.

When is a construction certificate required?

A construction certificate is required before any subdivision work is carried out. Subdivision work means the carrying out of any physical activity in, on, under or over land in connection with the subdivision (including the construction of roads and stormwater drainage system), that is authorised to be carried out under the conditions of a development consent. This requirement is found in section 81A of the Act.

Council or a certifier can request additional information that is essential to the proper consideration of the application. For the council, this must be done within 14 days of lodgement of the application (clause 79B of the Regulation).

Fees for construction certificates

Fees are unregulated. For councils the fee must be an approved fee adopted in accordance with the management plan process in the *Local Government Act 1993*.

Compliance with council's subdivision standards

Detailed plans and specifications must satisfy the standards in council's plans and codes — for civil works (such as roads and drainage) and the design and construction of the subdivision. This requirement will be specified by conditions on the development consent. Some more-detailed designs can be provided as work begins, so long as clear specifications demonstrate that the proposed works will comply with council's standards.

What is meant by 'not inconsistent with the development consent'?

A construction certificate cannot be issued if it is inconsistent with the development consent. However, the following points should be noted:

- plans and specifications relied upon for the purpose of obtaining a construction certificate will invariably contain a greater level of detail than that submitted with the development application (DA)
- some variations to the design of the subdivision may have occurred either to comply with a specified condition of development consent or improve the efficiency and functionality of the works

- the regulations recognise the fact that variations may occur when proceeding to this level of detail, by not requiring that the design and construction of the subdivision be strictly in accordance with the development consent.

Changes to plans such as the following are consistent with the development consent:

- changes to comply with conditions of development consent
- additional details to show compliance with council's subdivision standards.

The following are inconsistent with the development consent:

- significant changes in the location of roads or detention basins
- significant changes that contravene a condition of development consent (such as solar orientation of lots)
- significant reduction in the area for bushfire protection measures (such as fuel free zones).

In these circumstances a section 96 modification, to vary the development consent, would be required (see Practice Note: *When is a section 96 modification required?*). If there is some doubt about the extent of changes, it should be discussed with the council. This could save time and energy for all parties.

Can you have conditions on construction certificates?

No, except in the case of an old-system development consent, which is covered by the transitional arrangements (see below). Site-management operating requirements, the need to comply with council's subdivision work standards, and site erosion controls will appear as conditions on the development consent.

Appeal rights against the decision

Applicants may appeal (within 12 months) against the council's (or Minister's) decision to refuse to issue a construction certificate (or, in the limited circumstances outlined below, against any conditions). There is no appeal right against an accredited certifier's decision. Further, there is a

deemed refusal period of 28 days (or to coincide with the deemed refusal for a DA if they are lodged together) applying to the council.

Modification of a construction certificate

Clause 79IA of the Regulation permits the person who made an application for a construction certificate to apply to modify the construction certificate. The modification is applied for and assessed in the same way as the original application.

The council or certifier will need to consider whether the nature and extent of the modification is inconsistent with the development consent. If so, a section 96 modification to the consent would be required.

Can construction certificates be staged?

It is possible to issue construction certificates for various stages of the development.

Can DAs and construction certificates be lodged together?

Yes. Working drawings would be submitted with this type of application. For smaller developments, councils can release the DA and construction certificate together. For some developments, councils tend to release the development consent and advise that the construction certificate can be picked up once conditions (which could include payment of damage deposits) have been complied with. In this case, the construction certificate can take the form of a stamp on the approved plans.

Transitional arrangements

New applications for subdivision are dealt with as DAs and construction certificate applications. Where an applicant has an old-system development consent, they may apply to the consent authority for a construction certificate. The consent authority may impose the conditions on a construction certificate that it would have imposed on the Part 12 approval. Reasons must be given for the conditions. The consent authority will also issue a subdivision certificate.

For further information please contact:

Policy and Reform Branch

Department of Urban Affairs and Planning

GPO Box 3927 Sydney NSW 2001

Phone 02 9391 2355

Fax 02 9391 2337

Email reform@duap.nsw.gov.au

