

Guiding Development — Practice Notes

Public and private sector roles

The purpose of this practice note is to outline the roles of the public and private sectors in the development process.

The system before July 1998

Before the major amendments to the system in July 1998, assessing development was largely a council responsibility — involving either a building application (BA) (such as for a dwelling house) or a development application (DA) plus a BA (such as for a commercial development or medium density housing). Similarly with subdivision applications. Private consultants had a role in providing reports on detailed site constraints (such as geotechnical reports) or engineering drawings — it was at council's discretion who was an appropriately qualified person. In such cases, while councils relied on such reports, responsibility and liability, in the first instance, remained with the council.

Introducing choice

The new system seeks to promote efficiency and National Competition Policy principles by introducing private certification. Private certifiers are accredited under an accreditation scheme administered by professional associations, such as the Institution of Engineers or the Building Surveyors and Allied Professions Board, and approved by the Minister for Urban Affairs and Planning. Applicants for accreditation must have relevant qualifications and experience, satisfy insurance requirements, comply with codes of conduct and follow procedures under the scheme. The new arrangements provide more checks and balances, greater consistency and more transparency.

Accredited certifiers and councils are both classed as certifying authorities. They can compete with each other in a number of ways:

- issuing construction certificates, certifying (among other things) compliance with the Building Code of Australia

- issuing compliance certificates, specifying that conditions of consent (or complying development certification) relating to works have been satisfied, that work complies with plans and specifications or nominating the classification of a building
- issuing complying development certificates, certifying that nominated development proposals (such as single storey dwellings or swimming pools) comply with standards and criteria in council's local environmental plans (LEPs) or development control plans, or a State environmental planning policy
- acting as principal certifying authority (PCA), responsible for issuing —
 - occupation certificates, specifying that buildings are safe to occupy, and
 - subdivision certificates, specifying that a subdivision can proceed to registration (where council LEPs permit).

Separate practice notes outline the types of certificate, who can be an accredited certifier and the role of the principal certifying authority.

The applicant has the choice and there can be various combinations. For buildings, issuing the construction, compliance and occupation certificates, and acting as PCA is open to competition. The applicant may choose council to issue the construction certificate, yet appoint a private PCA, or vice versa. The exceptions are:

- if a DA is required it must be approved by council (or in some cases the Minister)
- the subdivision certificate, which remains a council responsibility, until such time as council's LEP allows for private certification
- old applications (pre 1 July 1998), where council must be the PCA and issue all certificates.

Responsibility and liability

With the responsibility goes liability. A key feature of the new system is the introduction of proportionate liability — tying responsibility and liability to the issue of certificates (see section 109P of the *Environmental Planning and Assessment Act 1979* and Practice Note: *Who is responsible? Liability issues*).

Public sector role — advice, monitoring and enforcement

The State Government and local councils continue to have responsibility, in the public interest, for the workings of the system. This includes providing detailed advice (such as these practice notes) to intending applicants and the public, to promote understanding of the system and encourage good practice. In addition, the operation of the system is monitored, so that problems can be addressed and, when necessary, appropriate enforcement action taken. For example, if a building is not built in accordance with the development consent or complying development certificate, council has the power and responsibility to consider issuing an order even if the private sector has been involved.

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