

Guiding Development — Practice Notes

The use of compliance certificates

The purpose of this practice note is to assist councils and accredited certifiers by clarifying the use of compliance certificates in the development approvals process.

What are compliance certificates?

Compliance certificates are formal, legally guaranteed documents certifying compliance with conditions of approval and/or proper execution of works. They are one of the suite of certificates introduced into the *Environmental Planning and Assessment Act 1979* (the Act), with the 1998 amendments.

Are they mandatory?

No. The decision whether to use compliance certificates rests with the applicant, the consent authority and the principal certifying authority (PCA):

- applicants may obtain them to demonstrate that detailed designs comply with conditions of approval or that works have been properly executed
- consent authorities (councils or the Minister) may require them, in relation to particular matters, as conditions of development consent (see below)
- the PCA (council or private) may specify in a council policy or service contract with the applicant, respectively, that before the issue of an occupation certificate, the applicant would need to obtain a number of compliance certificates on aspects of the development.

Compliance certificates have effect (the liability provisions operate) when they are relied upon during the issue of other certificates — the construction certificate, the occupation certificate, or another compliance certificate.

Can councils still rely on consultants' reports?

Yes. In all cases it is still possible for councils to rely on reports from professionals, such as engineers or building surveyors, as evidence of compliance. Similarly, private sector PCAs can base their judgements on such reports.

What can compliance certificates cover?

Section 109C(1)(a) of the Act provides that compliance certificates can be issued to certify that:

- '(i) specified building work or subdivision work has been completed as specified in the certificate and complies with specified plans and specifications, or
- (ii) a condition with respect to specified building work or subdivision work (being a condition attached to a development consent or complying development certificate) has been duly complied with, or
- (iii) a specified building or proposed building has a specified classification identified in accordance with the Building Code of Australia, or
- (iv) any specified aspect of development complies with the requirements of any other provisions prescribed by the regulations.'

There are a number of things to note from this list:

- their use in the first and second case is restricted to post-development consent (or complying development certification) — that is, they cannot be submitted with a development application or complying development application (see section 109G of the Act)
- they can accompany an application for a construction certificate, certifying details of designs (where required as a condition of consent) and removing the need for detailed assessment
- to date no matters are listed in the regulations.

Requiring compliance certificates as conditions of development consent or terms of a council policy/service agreement

In drafting conditions or terms of policies or agreements, councils and private sector PCAs, respectively, should give the applicant the option of providing a compliance certificate or other form of documentary evidence. Councils need to ensure that conditions can be satisfied and that they are not creating a monopoly situation, as many aspects of the building and subdivision functions will not have accredited certifiers. Examples may include storage requirements for hazardous chemicals or engineering details not covered by the Building Code of Australia. In these cases it is possible to rely on professional consultants' reports.

Compliance certificates and final sign off on works completed

While it is not illegal to do so, it is not the intent of the legislation that a compliance certificate be used as a final check that all works have been executed in accordance with plans, specifications and development consent conditions. The Act does not provide for such a final check on technical and planning requirements. The occupation certificate is the appropriate Part 4A certificate and is a limited check — certifying fitness of the building for occupation.

In deciding whether to issue an occupation certificate the PCA can rely on compliance certificates (see Practice Note: *The role of the principal certifying authority*).

Fees for compliance certificates

Councils are able to charge fees for compliance certificates provided that the fees are approved fees under the *Local Government Act 1993* (and identified as such in the council's management plan). An accredited certifier can set their own fees for certificates.

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