

# Managing complaints about development

Complaints about development sites are commonplace. Where complaints arise, early intervention by the certifying authority and local council may prevent issues being escalated.

The best way to avoid complaints is to ensure everyone is aware of their responsibilities. The principal certifying authority (PCA) should advise the property owner and the builder/developer of their legislative duties, including the need to build in accordance with approved plans, follow the conditions of the development consent, give 48 hours notice of inspections and apply for an occupation certificate/subdivision certificate.

## Erect and maintain a site sign

A sign with the contact details of the PCA and the principal contractor must be prominently erected on the development site before work commences to notify neighbours and others of the parties involved in the work, should an issue arise. See the [info sheet](#) for more details.

## Refer the complaint to the right authority

Councils receiving a complaint about a development for which they are not the PCA should consider whether they are the appropriate authority to resolve it. Complaints that warrant action by councils because of their greater enforcement powers include:

- urgent matters, for example, a danger to the public or a significant breach of the development consent or legislation
- matters that are not preconditions to the issue of the occupation/subdivision certificate, such as sediment control or traffic management.

If the matter does not, or is unlikely to, require immediate action by the council, the council should refer the complaint to the PCA and notify the complainant of its actions.

## Acknowledge, investigate and respond to the complaint

The PCA should acknowledge receipt of a complaint to the complainant as soon as possible and must investigate the complaint. This generally involves visiting the site, contacting the builder, and/or checking the approved plans and the conditions of the development consent.

The PCA should respond in writing to written complaints, generally within 14 days and can respond verbally to verbal complaints, generally within 48 hours. If a matter is likely to take longer to investigate, the PCA should inform the complainant and advise them of the steps being taken.

If the investigation reveals the need for rectifying action, the PCA or council must first contact the principal contractor who is in a position to physically resolve the problems.

If the matter may affect the person who appointed the PCA, or if the principal contractor is reluctant to comply with the PCA's directions, the PCA should advise the person who appointed them.

A verbal request may be appropriate to address the concerns; however, if the matter is causing significant nuisance, is having significant environmental impact or is potentially dangerous, it may be appropriate to issue written directions, notices or orders. Accredited certifiers and councils have different powers where this further action is needed.

### Accredited certifiers as the PCA

An accredited certifier PCA can **issue a notice** under section 109L of the EP&A Act stating an intention to give an order, the proposed terms of the order, the proposed period of compliance with the order and the person's right to make representations to the council.

In an emergency situation, the PCA should immediately **refer the matter to the council**. Where an issue cannot be resolved by the accredited certifier and/or by the council, the certifier must **refuse to issue a certificate**, as appropriate.

An accredited certifier who fails to take timely and appropriate action to address non-compliance issues may fall short of the standards expected and may be found guilty of unsatisfactory professional conduct.

#### Councils

Councils can take action on any development for which they have issued the development consent, even when not appointed as the PCA. Councils' greater powers often result in more effective complaint resolution.

Following notification of intent to issue an order (unless an emergency is involved), councils can **issue orders** under the EP&A Act requiring compliance with the development consent and/or cessation of building or subdivision work. Councils must, under clause 281A(2) of the EP&A Regulation, notify the PCA of their intention to give an order within seven days of giving the original notice to the person.

On issue of an order, councils can also **issue a compliance cost notice** to recover the costs of ensuring compliance with the order (see the [info sheet](#) for more details).

Councils may **impose an on-the-spot fine** by issuing a penalty infringement notice for failure to comply with an order.

Councils can **use clean-up, prevention and noise control notice powers** under the *Protection of the Environment Operations Act 1997* to ensure compliance with conditions of consent, for example sediment control or hours of work.

Any person (though usually the council) may **bring proceedings under the EP&A Act** in the Land and Environment Court for an order to remedy or restrain a breach of the Act.

### Give notice of action taken

Any enforcement action taken by councils regarding a development for which it is not the PCA should be notified **to the PCA**. The PCA needs to report back **to the complainant** on the action taken in the same form as the complaint was received (verbally or in writing).

### Make a written record of the complaint

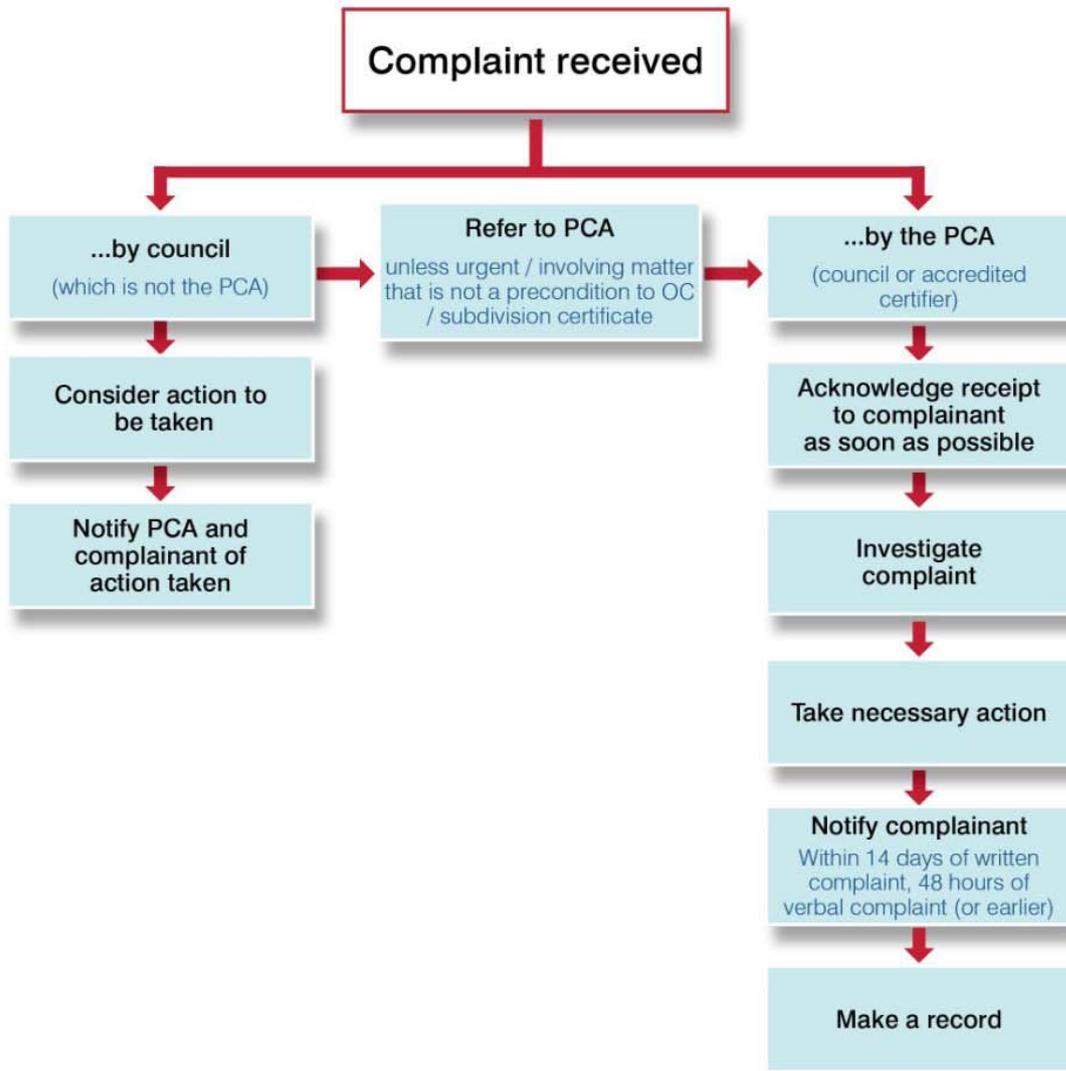
The PCA must keep a written record of all complaints received in relation to development in accordance with clause 267A EP&A Regulation. The record should include:

- the name and contact details of the complainant
- the date the complaint was received
- the address and any identifying features of the property subject to the complaint
- the events surrounding the complaint from the complainant's view and as revealed by the investigation.

It must also, under clause 267A(1) of the EP&A Regulation, include any response by the PCA and any action taken by the PCA.

The record must be kept for 10 years from the date the complaint was received by the PCA (clause 267A(2) EP&A Regulation). The PCA should let the complainant know that they are making a record of the complaint and that the record will be submitted to the Board on its request.

## Complaints management process



## More information

For more information, contact the Building Professionals Board

- [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)
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