



The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government
Minister for Small Business
Minister for Fair Trading

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*Our reference: COR-06973-2022
Your reference: D22/282766*

Mr David Tuxford
Acting General Manager
Georges River Council
By email: smatthew@georgesriver.nsw.gov.au

Dear Mr Tuxford

Thank you for your letter of 15 December 2022 about private certifiers in the building certification industry.

I understand the concerns you raised in your letter and can advise that the certification system is currently being reviewed as part of the building reforms. The NSW Government's work to enhance the planning and building systems' digital and data capability has allowed the building regulator to undertake targeted audits of risky certifiers to understand what opportunities for enhancing NSW's building certification framework could be adopted as part of the review.

Your letter raised concerns that some residents in your council have been unable to find relevant information about building work until the work commences. The Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) sets out the requirements for notices that must be provided to neighbours and councils. If councils are aware that certifiers are not complying with notification requirements, they should report this to NSW Fair Trading.

In relation to concerns about certifiers failing to exercise their duties, it should be noted that any person carrying out work needs to comply with the development consent. Under the requirements of the Environmental Planning and Assessment legislation, written direction notices are mandatory in relevant circumstances, including where a certifier becomes aware that building work does not comply with the relevant development consent.

You may also be pleased to know that a further volume of the Certifier Practice Standard has been published for Class 1 buildings (single dwellings). This Standard will be a condition of registration for all certifiers from 1 March 2023. Both this and the existing Standard for Class 2 building work have chapters on 'certifiers as public officials' and 'conflicts of interest', which are mandatory for all registered certifiers. Failure to abide by the exacting standards set out in these practice standards constitutes a breach of registration, and can result in penalties and deregistration.

Councils are the enforcement regulatory authority for monitoring development at the local level, including ensuring the developer and private certifiers follow the rules and conditions contained in the development consent. Councils can exercise a number of enforcement measures, which include the following:

- Enforce development compliance, issue orders, stop work notice or issue a fine when legislative requirements and safety conditions are breached.
- Issue fines for failing to comply with an order.
- Mediate development issues between the developer and impacted residents.
- Commence proceedings in the Land and Environment Court to invalidate a complying development certificate that is contrary to planning standards.

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- Prosecute the certifier for issuing a construction certificate and occupation certificate unlawfully.

Information about the powers that a Council has in relation to private certifiers can be found on the [NSW Fair Trading website](#).

In regards to your suggestion to make documents related to all complying development certificates available on the planning portal, this is the responsibility of the Department of Planning and Environment. I have asked my Department to share your correspondence with the Department of Planning and Environment.

If you have any further queries, please contact Angus Abadee, Director, Building and Construction Policy at angus.abadee@customerservice.nsw.gov.au

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Victor Dominello', written in a cursive style.

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Date: 06/02/23