

Office of the General Manager

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15 July 2024

The Hon. Anoulack Chanthivong MP
Minister for Better Regulations and Fair Trading
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Complying Development Legislation

I write to you as a continuation of the [Certification Campaign](#) run by Georges River Council. The Campaign aims to help address reoccurring issues and gaps within the Certification Industry, without slowing development in our local communities.

A common issue experienced by the Georges River community is the lack of transparency within the [pre-approval notification step](#) of a Complying Development Certificate (CDC). The intention of promoting “neighbourly conversation” is often missed when property owners and Principal Certifiers fail to share building plans, citing privacy concerns or copyright protection.

While I note that CDCs are not open for submissions, the practical effect of pre-approval notification as stated in Section 134 of the *Environmental Planning and Assessment Regulations 2021* (EPA Regulation), is fundamentally compromised, as neighbours are unable to:

- Determine the impact of the CDC without access to basic site and elevation plans, and
- Deliberate accordingly within the current 14-day notification period.

It is for these reasons that Georges River Council, at its meeting on the 24th of June 2024, resolved to request a legislative review of EPA Regulation relating to CDCs, specifically:

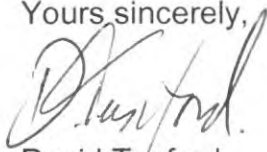
- (a) to amend section 134 (3) of the *Environmental Planning and Assessment Regulations 2021*, to allow a 21-day notification period to neighbours and councils, as opposed to the 14 days currently stated.
- (b) to amend section 134 (3) of the *Environmental Planning and Assessment Regulations 2021* to require each CDC application to also be notified on the NSW Planning Portal.

- (c) to amend section 134 (4) of the *Environmental Planning and Assessment Regulations 2021* to include the submission of a sufficiently detailed site plan and sufficiently detailed elevation plans in the notice to neighbours and councils.
- (d) to include provisions for an independent technical review of a CDC application by the Building Commission NSW where alleged departures from the prescriptive and/ or numerical requirements of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* have been identified and documented by an appropriately accredited professional within the 21 day notification period.
- (e) to allow the relevant Officer, employed by Building Commission NSW, to issue notices to the Private Certifier, involved with the CDC, to rectify the departures from prescriptive and/ or numerical requirements of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

I note that Georges River Council has recently responded to correspondence from the Department of Planning and Public Spaces with detailed, easily implementable solutions to section (b) and (c), a copy of the correspondence accompanies this letter. As a Council, we completely support the Department's new approach to reviewing the functionality of the NSW Planning Portal and look forward to presenting our impactful solutions within the *Customer First Program*.

Should you require any further information please contact Council's Director Environment and Planning, Mr Joseph Hill on 9330 6166.

Yours sincerely,



David Tuxford
General Manager

Att.



9 July 2024

Mr Tom Loomes
Executive Director
Department of Planning, Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2150

Dear Mr Loomes,

Complying Development Legislation

Thank you for your response dated the 13th of May 2024.

I acknowledge your comments regarding the *Environmental Planning and Assessment Regulation 2021* requiring Local Councils to publish Complying Development plans on their website. However, the practical effect of section 243 of the EPA Regulation 2021 is not entirely consistent with the objectives of section 1.3 (a) to (j) of the EPA Act 1979.

Last year, over 550 Complying Development applications were lodged within the Local Government Area (LGA), with each lodgement containing an average of 100 pages. 90% of the applications were lodged by Private Certifiers. There are significant legal risks associated with privacy and copy right legislation when sharing residential Complying Development plans without heavy redaction. Georges River Council does not have the resources to strip and redact every Complying Development application received in the LGA for upload onto a public domain.

In order to comply with numerous legislative requirements, Georges River Council encourages the community to submit a Government Information (Public Access) (GIPA) request to view specific details within Complying Development applications. Each GIPA request requires significant administrative handling including extraction, redaction and in-person viewing. Not only is this process a drain on Council resources, but it is inefficient, inaccessible and a key contributor to the lack of transparency and trust in the Certification Industry.

A simple, yet effective State-wide solution to accessibility issues surrounding Complying Development plans would be to:

1. Enable the **Consent Authority Required Documents** function in the NSW Planning Portal for a Complying Development application, the same way it is currently used for Development Applications (DAs).
2. Set a Site Plan and Elevation Plans as **Consent Authority Required Documents** for Complying Development applications.
3. Display **Consent Authority Required Documents** for Complying Development applications alongside the *"basic details about CDC [that] are published on the planning portal and are searchable by the public."*
4. Facilitate a legislative amendment to reflect the above and repeal section 243 of the EPA Regulation 2021.

In this instance, Complying Development applicants would be required to separately upload a sufficiently detailed **site plan** and sufficiently detailed **elevation plans**, for the purpose of public viewing. This mirrors the notification plans that are required to be submitted with DAs and provided to notified neighbours. Site plan and elevations plans do not display room use or entry points within the property, thus adhering to privacy legislation. Yet, these documents contain enough information for concerned parties to ascertain the boundary impact, size and scale of the approved development, as well as whether the Principal Certifier has acted in accordance with Complying Development Legislation.

This solution leverages pre-existing functions within the NSW Planning Portal, requiring minimal State Government investment for a substantial increase in the Portal's capability. Moreover, the benefits of this function reach far beyond resolving public accessibility issues to Complying Development plans and conserving Local Council resources. Requiring the Complying Development applicant to upload a sufficiently detailed site plan and sufficiently detailed elevation plans as a separate file as part of the lodgement on the Portal will:

- Increase accountability of the Principal Certifier,
- Restore the integrity of the pre-approval notification process, and,
- Rebuild trust and transparency within the industry.

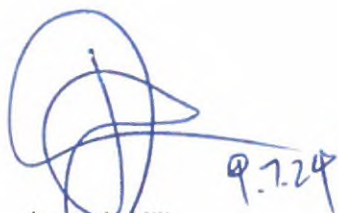
This solution is part of Georges River Council's Certification Campaign and serves as a precursor for a recent Council Resolution in which Council will request a legislative review of section 134 (3) and (4) of the EPA Regulation 2021. Once finalised, a copy of the request will be forwarded to your office.



In the meantime, my Directorate welcomes the Department's new approach to reviewing the functionality of the NSW Planning Portal and looks forward to presenting further impactful solutions within the *Customer First Program*.

Should you require further information regarding Georges River Council's Certification Campaign, or further justification of the proposed solution, please contact me on 9330 9450.

Yours Sincerely,



Joseph Hill
Director
Environment and Planning

