



Hurstville City Council

Private Principal Certifying Authority (PCA) Complaint Policy

Adopted: 28 May 2008

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1. INTRODUCTION

1.1 The Policy

This policy is called “Hurstville City Council’s Private Principal Certifying Authority (PCA) Complaint Policy.”

1.2 Commencement

This Policy was adopted by Council on 28 May 2008 and commences on 28 May 2008.

1.3 Purpose

This policy has been developed in response to a recommendation by the NSW Ombudsman to explain how Council will handle complaints about building and development work where a private Principal Certifying Authority (PCA) has been appointed.

1.4 Policy Statement

Council is strongly committed to ensuring building work on all development sites within the Hurstville Local Government Area, whether or not Council or a Private Principal Certifying Authority have been appointed, complies with Council’s Development Consent.

1.5 Policy Objective

The aim of this policy is to establish clear guidelines for the exercise of the discretion the Council and its officers must use in dealing with complaints relating to building sites where a Private Principal Certifying Authority has been appointed.

- * This policy explains the respective roles and responsibilities of the Council, as the consent authority and regulatory body.
- * This policy explains the roles and responsibilities of accredited certifiers who have been appointed as PCA.
- * Specifies the criteria which the Council and its officers will take into consideration when deciding:
 - (a) to act on complaints, and
 - (b) the most appropriate type of action.
- * Provides information to the public about the Council’s role and policy on building and development sites where a Private Principal Certifying Authority has been appointed.

1.6 Application

This policy applies to the management and investigation of complaints made to Council regarding unlawful/non-compliant building work on development sites where a Private Principal Certifying Authority has been appointed.

1.7 Definitions

The following defined terms are used in the policy:

Accredited Certifier: Also referred to as ‘private certifier’. In relation to matters of a particular kind, means a person who is the holder of a certificate of accreditation under the *Building Professionals Act 2005* in relation to those matters. Depending on the level of accreditation, an accredited certifier can act as a certifying authority and approve construction certificates (CC) and complying development certificates (CDC) and may be appointed the PCA for a development.

BPB: Means the Building Professionals Board. The BPB is responsible for:

- accrediting all accredited certifiers,
- investigating complaints against them,
- conducting audits of accredited certifiers and councils, and
- improving professional practice through education and training.

CC: Means construction certificate. A CC is required before the commencement of building work subject to a development consent (except where a Complying Development Certificate has been issued). A CC certifies that:

1. The detailed construction plans and specifications will comply with the Building Code of Australia (BCA) including relevant associated structural standards and codes;
2. The detailed construction plans and specifications are “not inconsistent” with the development consent; and
3. All outstanding conditions of the development consent such as the payment of section 94 contributions, security deposits, bonds, and conditions of consent must be finalised before a Construction Certificate is issued.

A CC may be issued by Council or by an accredited certifier.

CDC: Means complying development certificate. A CDC can only be issued for the category of minor works listed in Council’s *‘Development Control Plan – 1 Hurstville City Centre & 2 Local Government Wide.’* and subject to compliance with predetermined development standards. A CDC is a certificate:

- (a) that states that particular proposed development is complying development and (if carried out as specified in the certificate), will comply with all development standards applicable to the development and with other requirements prescribed by the regulations concerning the issue of a CDC, and
- (b) in the case of development involving the erection of a building, that identifies the classification of the building in accordance with the Building Code of Australia (BCA).

A CDC may be issued by Council or by an accredited certifier.

Certifying Authority: Means a person who:

- (a) is authorised by or under section 85A of the *Environmental Planning & Assessment Act 1979* (EP&A Act) to issue complying development certificates, or
- (b) is authorised by or under section 109D of the EP&A Act to issue Part 4A certificates.

EP&A Act: Means the *Environmental Planning & Assessment Act 1979*

OC: Means occupation certificate. In summary, in issuing an OC, the PCA must be satisfied that:

- a development consent or CDC is in force;
- the building is suitable to use or occupy under its BCA classification;
- any preconditions set by the development consent or the CDC to the issue of an OC have been met;
- if the building is erected pursuant to a development consent, that a CC has been issued with respect to the plans and specifications for the building;
- other matters required by the regulations to be complied with before the certificate is issued have also been met.

Conditions of a development consent (or CDC) could require certain matters, such as those relating to site safety and preventing adverse impacts on adjoining land uses or sites, to be met before the issue of an OC.

An OC can only be issued by the appointed Principal Certifying Authority (PCA).

PCA: Means the Principal Certifying Authority. Also referred to as the 'building inspector'. The PCA must be appointed before any building work commences and is responsible for inspecting building and subdivision work during the construction phase of development. This is to ensure that the work is consistent with the development consent and construction certificate and to enable the issuing of an occupation certificate when the work is complete.

Section 109E of the EP&A Act states the PCA must be satisfied:

- (a) that a construction certificate or complying development certificate has been issued for the building work before the work commences on the site, and
- (b) that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the *Home Building Act 1989*, before

- any residential building work commences on the site, unless the work is to be carried out by an owner-builder, and
- (c) that the owner-builder is the holder of any owner-builder permit required under the *Home Building Act 1989*, before an owner-builder commences on the site any residential building work, and
 - (d) that building work on the site has been inspected by the PCA or another certifying authority as prescribed and as required by the PCA, before the PCA issues an occupation certificate for the building or work, and
 - (e) that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of an occupation certificate have been met, before the PCA issues the occupation certificate.

Either Council or an accredited certifier can be appointed the PCA.

1.8 Relevant Legislation

Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000

2. BACKGROUND

The main certification steps of the construction/building phase that need to occur can be summarised as follows:

1. A CC (where development consent has been issued) or a CDC must be issued. These certificates can be issued by either Council or an accredited certifier. Where issued by an accredited certifier, copies of the approved documentation must be submitted to Council within two (2) days of being issued.
2. A PCA must be appointed. The PCA can be either Council or an accredited certifier.
3. The PCA must be notified who will carry out the building works. For residential development this must be either a licensed builder or the owner, under an Owner-Builder's permit issued by the Department of Fair Trading.
4. For residential building work, the PCA must be satisfied that the required Home Warranty Insurance is in place or that the owner has obtained the required Owner-Builder's permit.
5. The PCA, if private, must notify Council at least two (2) days prior to the commencement of any building work of his/her appointment.
6. The PCA must notify the person appointing him/her, at least two (2) days prior to the commencement of any building work, of any critical stage inspections and other inspections that are required to be carried out in respect of the building work.

7. Council must be notified at least two (2) days prior to the commencement of any building work of the intention to commence such work.
8. The PCA must be satisfied that all preconditions of the development consent or CDC that were required to be complied with prior to the commencement of any building work have been satisfied.
9. Signage is to be erected and maintained at the front of the site providing details of the principal contractor (builder) and the PCA, including their names and contact telephone numbers.
10. The PCA or some other certifying authority (with the agreement of the PCA) must undertake all critical stage inspections. Only the PCA can carry out the final critical stage inspection.
11. The PCA must issue an OC prior to the occupation or use of all or part of the building.
12. The PCA must submit a copy of the OC to Council, with all associated documentation, within two (2) days of it being issued.

3. ROLE OF A PRIVATE PCA

When an accredited certifier is appointed the PCA, they assume the role of Council and, as such, take responsibility for the development site. The primary roles of the PCA are to ensure compliance with the development consent and conditions, the carrying out of all the required inspections of the site and the issuing of an OC.

The EP&A Act and Regulation identifies the responsibilities of the private PCA and their discretion. For example, Section 109E of the Act lists those items that the PCA must be satisfied about in relation to a development. Also, Clause 161 of the Regulation lists the matters that the PCA may make a decision on, in lieu of the Council and these include:

- Earthwork
- Stormwater drainage work
- Landscaping work
- Erosion and sediment control work
- Excavation work
- Mechanical work
- Structural work
- Hydraulic work
- External finishes of a building.

Private PCA's have some enforcement powers under the EP&A Act, including the power to [may] issue a 'notice of intention to issue an order' under Section 109L setting out the proposed terms of an order and the proposed period of compliance. A copy of any 'notice of intention' issued by a PCA must be provided to Council for the Council to decide whether it will go on to issue the order.

4. ROLE OF COUNCIL

When a private PCA has been appointed, the Council generally becomes the “keeper of the records”, but is not directly involved in the inspection of the development site.

By not being the PCA it means that Council does not have ready access to various professional reports that may be produced during the construction phase, including structural engineer’s certification and survey information. Such information and reports are not required to be submitted to Council until the final occupation certificate has been issued. This is a significant impediment to Council’s ability to respond to general enquiries on a development site.

Nevertheless, Council retains its regulatory role and enforcement powers and will take action if and when required. Also, as the “keeper of the records” any person may seek access to the Council’s development consent files and the construction certificate documentation in accordance with the provisions of Section 12 of the *Local Government Act 1993*.

The Council is not the regulator of accredited certifiers and any complaints about the conduct and actions of a private PCA must be directed to the BPB. More information on lodging a complaint about an accredited certifier can be located on the BPB’s website (<http://www.bpb.nsw.gov.au/public/compliant.shtml>).

5. LODGING A COMPLAINT ABOUT A DEVELOPMENT SITE

Any complaints in relation to a development site should be referred to the PCA in the first instance, as this is likely to be the person with the most association and familiarity with events occurring on the site. In many cases, the PCA may be able to effectively resolve the complaint without the need for enforcement action.

Contact details for the PCA should be provided on a sign at the front of the development site or can be obtained from the BPB’s website (www.bpb.nsw.gov.au) or by contacting Council. Letters and emails received by Council for development sites with a private PCA will, in the first instance, be referred to the appropriate PCA for consideration and investigation. Council will notify the writer of the letters/emails of this action and provide the contact details for the private PCA.

The Council **will only act on complaints** received in relation to development sites where a **private PCA** has been appointed when:

1. The work threatens life, safety or damage to property or the environment at the time of the complaint and immediate action is required;
2. The alleged departure is substantial and there is a likely environmental impact;
3. The complaint relates to work that may not form part of a development consent and therefore would not be the responsibility of the PCA;
4. Where the PCA’s response to the complaint is considered inadequate or Council does not agree with the PCA’s position;

5. Penalty infringement notices are to be issued and/or prosecution proceedings are to be commenced;
6. The complaint relates to breaches of 'housekeeping' or environmental conditions of consent that are generally enforced by Council's Health and Building Regulation Officers, including hours of work, footpath and roadway obstructions, odours, fumes, noise, dust, sediment control and discharges; and/or
7. It is in the public interest.

The factors that Council will take into consideration to determine if a private PCA's handling of a complaint is adequate include the following:

1. The timeliness of the investigation, having regard to the seriousness of the complaint;
2. Whether the certifier demonstrates a genuine commitment to address the issues;
3. The appropriateness of the action taken, including whether a physical inspection has been undertaken and whether any professional reports have been relied on;
4. Whether the certifier keeps the customer informed; and
5. Whether the customer is satisfied with the certifier's response.

All enforcement action taken by the Council will be in accordance with Council's Enforcement Policy, as adopted on 28 May 2008.

6. ACKNOWLEDGEMENTS

The following documents and references were used in the preparation of this policy

Department of Planning Advisory Notes:

- Critical stage inspections: <http://www.planning.nsw.gov.au/planningsystem/pdf/adviceoninspectionsandsignsfinal120704.pdf>

- Occupation Certificate: http://www.planning.nsw.gov.au/planningsystem/pdf/circulars/dipnr_ps05_001.rtf

BPB Information Sheets:

- Building Professionals Board: http://www.bpb.nsw.gov.au/p/board_2_april_07.pdf
- Accredited certifiers: http://www.bpb.nsw.gov.au/p/accredited_certifiers_3.pdf

Ryde City Council v Echt & Anor [2000] NSWCA 108 –

<http://www.agd.nsw.gov.au/scjudgments/2000nswca.nsf/32a6f466fc42eb68ca256739000a724d/9018874d865e1363ca2568d1007c4596?OpenDocument>

Woollahra Municipal Council

- Procedure for handling complaints about development work where a private principal certifying authority has been appointed.