

The Hon Anoulack Chanthivong MP

Minister for Better Regulation and Fair Trading, Minister for Industry and Trade,
Minister for Innovation, Science and Technology, Minister for Building,
Minister for Corrections



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Your Ref: NM059-24,D24/174046,D24/188856

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

Dear Mr Tuxford

Thank you for your correspondence about Complying Development legislation and broader certification campaign outcomes on behalf of Georges River Council.

I note your feedback in relation to pre-approval notification for Complying Development Certificates (CDC) and that the Department of Planning, Housing and Infrastructure has previously provided a response on these matters. In relation to the proposed legislative reforms to the Environmental Planning and Assessment Regulation 2021, I have referred these to the Hon Paul Scully, Minister for Planning and Public Spaces, as this legislation sits within his area of responsibility.

Recommendations (d) and (e) in your letter are asking for the introduction of legislative provisions allowing Building Commission NSW to conduct a review of a CDC outcome where alleged departures from prescriptive and numerical requirements have been identified, and to issue notices to the certifier to rectify such departures.

Once a CDC is issued it is valid and can be acted upon by the applicant who is then entitled to carry out building work. I am advised that unfavourable outcomes for homeowners and tradespeople throughout the subcontracting chain may be created if Building Commission NSW, which is not a judicial body, had powers to reverse or amend the statutory decision of a registered certifier or the local council.

Section 4.31 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides powers for any person, including a local council, to initiate proceedings in the Land and Environment Court (LEC) to review the issue of a CDC and challenge its validity. This section allows a local council to commence proceedings to have the LEC review the matters about which a certifier must be satisfied as jurisdictional facts.

Additionally, under the EP&A Act a local council can exercise compliance and enforcement powers to assist residents impacted by poor certification work, such as issuing of development control order, including compliance orders and stop work orders.

You may be pleased to know that the NSW Government is working on legislative reforms for the building industry that is proposed to include reforms to the certification process, including enhanced oversight and regulation of certifiers. These reforms are proposed to give Building Commission NSW enhanced, but proportionate, powers to oversee and act upon poor certifier conduct, improving outcomes for applicants.

In circumstances where Council is made aware of poor certifier conduct, I encourage Council to lodge a complaint with Building Commission NSW.

Should you require more information, please contact Michael Marks, Policy Manager at Building Commission NSW at michael.marks@customerservice.nsw.gov.au.

Sincerely,



03-10-21

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