

AGENDA

Environment and Planning Committee

Monday, 08 April 2024

7:00 PM

Waratah Room

Georges River Civic Centre,

Hurstville



OATH OF OFFICE OR AFFIRMATION OF OFFICE

All Georges River Councillors are reminded of their Oath of Office or Affirmation of Office made at the time of their swearing into the role of Councillor.

All Councillors are to undertake the duties of the office of Councillor in the best interests of the people of the Georges River Council area and are to act faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the *Local Government Act 1993* or any other Act to the best of their ability and judgement.

DISCLOSURES OF INTEREST

All Georges River Councillors are reminded of their obligation to declare any conflict of interest (perceived or otherwise) in a matter being considered by Council or at any meeting of Council.

ENVIRONMENT AND PLANNING COMMITTEE MEETING

ORDER OF BUSINESS

OPENING

ACKNOWLEDGEMENT OF COUNTRY

Council acknowledges the Bidjigal people of the Eora Nation, who are the Traditional Custodians of all lands, waters and sky in the Georges River area. I pay my respect to Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples who live, work and meet on these lands.

APOLOGIES / LEAVE OF ABSENCE

REQUEST TO JOIN VIA AUDIO VISUAL LINK

NOTICE OF WEBCASTING

DISCLOSURES OF INTEREST

PUBLIC FORUM

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

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CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Item: ENV015-24 Confirmation of the Minutes of the Environment and Planning Committee Meeting held on 11 March 2024

Author: Executive Services Officer

Directorate: Office of the General Manager

Matter Type: Previous Minutes

ENV015-24

RECOMMENDATION:

That the Minutes of the Environment and Planning Committee Meeting held on 11 March 2024, be confirmed.

ATTACHMENTS

Attachment [↓](#)1 Minutes of the Environment and Planning Committee Meeting held on 11 March 2024



MINUTES

Environment and Planning Committee

Monday, 11 March 2024

7:00 PM

Waratah Room

Georges River Civic Centre,

Hurstville



GEORGES RIVER COUNCIL

UNCONFIRMED MINUTES

UNCONFIRMED MINUTES

PRESENT

COUNCIL MEMBERS

Councillor Peter Mahoney (Chairperson), Mayor, Councillor Sam Elmir, Deputy Mayor, Councillor Elise Borg Councillor Ashvini Ambihaipahar, Councillor Christina Jamieson, Councillor Nick Katris, Councillor Kathryn Landsberry, and Councillor Benjamin Wang.

COUNCIL STAFF

General Manager – David Tuxford, Director Environment and Planning - Meryl Bishop, Manager Strategic Planning - Catherine McMahan, Coordinator, Strategic Planning - Stephanie Lum, Strategic Planner/Urban Designer - Anne Qin, Strategic Planner – Molly Porter, Strategic Planner – Michelle Fawcett, Manager Environment Health and Regulatory Services – Andrew Spooner, Executive Manager, City Futures – Simon Massey, Executive Assistant to the Director, Environment and Planning - Leanne Allen (Minutes), Executive Services Officer – Marisa Severino, and Team Leader Technical Services Mark Tadros.

CONSULTANTS

Felicity Ratcliffe - Associate Director Group GSA, John Arnold - Director Arnold Planning.

OPENING

The Chairperson, Councillor Mahoney, opened the meeting at 7pm

ACKNOWLEDGEMENT OF COUNTRY

The Chairperson, Councillor Mahoney acknowledged the Bidjigal people of the Eora Nation, who are the Traditional Custodians of all lands, waters and sky in the Georges River area. I pay my respect to Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples who live, work and meet on these lands.

REQUEST TO ATTEND VIA AUDIO VISUAL LINK

There were no requests to attend via Audio Visual Link.

APOLOGIES/LEAVE OF ABSENCE

There were no apologies or requests for leave of absence.

NOTICE OF WEBCASTING

The Chairperson, Councillor Mahoney advised staff and the public that the meeting is being recorded for minute-taking purposes and is also webcast live on Council's website, in accordance with section 5 of Council's Code of Meeting Practice. This recording will be made available on Council's Website.

CODE OF MEETING PRACTICE

Council's Code of Meeting Practice prohibits the electronic recording of meetings without the express permission of Council.

DISCLOSURES OF INTEREST

Councillor Mahoney declared a Non-Significant Non-Pecuniary Interest in item **ENV008-24 Outcomes of Community Consultation and Preparation of Biodiversity and Character Planning Proposal** for the reason that he lives in the existing Foreshore Scenic Protection Area and made a submission to Council under the community consultation process, in my capacity as a resident. Councillor Mahoney will remain in the meeting and take part in consideration and voting on this item.

Special Interest Disclosure - Councillor Mahoney submitted a Special Disclosure of Pecuniary Interest in item **ENV010-24 Outcomes of Public Exhibition - Housekeeping Planning Proposal** for the reason that he has an interest in land in the GR LEP 2021 (Planning Proposal). Councillor Mahoney will partake in any deliberations on this matter and will remain the meeting and participate in the consideration and voting on this item.

Special Interest Disclosure - Councillor Mahoney submitted a Special Disclosure of Pecuniary Interest in item **ENV008-24 Outcomes Consultation and Preparation of Biodiversity and Character Planning Proposal** for the reason that he has an interest in land in the R2-FSPA area. Councillor Mahoney will partake in any deliberations on this matter and will remain the meeting and participate in the consideration and voting on this item.

Councillor Borg declared a Non-Significant Non-Pecuniary Interest in item **ENV008-24 Outcomes of Community Consultation and Preparation of Biodiversity and Character Planning Proposal** for the reason that the parkland area adjacent to her property is proposed to be added to the FSPA area. Councillor Borg will remain in the meeting and take part in consideration and voting on this item.

Councillor Borg declared a Non-Significant Non-Pecuniary Interest in item **ENV010-24 Outcomes of Public Exhibition – Housekeeping Planning Proposal** for the reason that she has a property in the LGA and this item discusses the whole LGA. However, as there is no pecuniary interest relating to her property and this is a housekeeping amendment to the LEP, there is no special or other pecuniary interest to declare. Councillor Borg will remain in the meeting and take part in consideration and voting on this item.

Councillor Ambhaipahar declared a Non-Significant Non-Pecuniary Interest in item **ENV008-24 Outcomes of Community Consultation and Preparation of Biodiversity and Character Planning Proposal** for the reason that the parkland area adjacent to my property is proposed to be added to the FSPA area. Additionally, her parent in law's primary place of residence is located within the FSPA. However, there is no material/pecuniary impact to their home. Councillor Ambhaipahar will remain in the meeting and take part in consideration and voting on this item.

Councillor Ambhaipahar declared a Non – Significant Non - Pecuniary Interest in item **ENV010-24 Outcomes of Public Exhibition – Housekeeping Planning Proposal** for the reason it impacts the whole LGA but does not have any pecuniary impact as it addresses administrative matters. Councillor Ambhaipahar will remain in the meeting and take part in consideration and voting on this item.

Councillor Katris declared a Pecuniary Interest in item **ENV0013-24 Draft Merriman Reserve Plan of Management and Master Plan for Exhibition** for the reason that he has some residents that are clients of my Architectural Practice that live directly opposite Merriman Reserve. Councillor Katris will not partake in any deliberations on this matter and he will leave the meeting and not participate in the consideration and voting on this item.

Special Interest Disclosure - Councillor Wang submitted a Special Disclosure of Pecuniary Interest in item **ENV008-24 Outcomes Consultation and Preparation of Biodiversity and Character Planning Proposal** for the reason that he has an interest in land in the R2-FSPA area. Councillor Wang will partake in any deliberations on this matter and will remain the meeting and participate in the consideration and voting on this item.

Special Interest Disclosure - Councillor Wang submitted a Special Disclosure of Pecuniary Interest in item **ENV010-24 Outcomes of Public Exhibition - Housekeeping Planning Proposal** for the reason that he has an interest in land in the GR LEP 2021 (Planning Proposal). Councillor Wang will partake in any deliberations on this matter and will remain the meeting and participate in the consideration and voting on this item.

Special Interest Disclosure - Councillor Katris submitted a Special Disclosure of Pecuniary Interest in item **ENV008-24 Outcomes Consultation and Preparation of Biodiversity and Character Planning Proposal** for the reason that he has an interest in land in the R2-FSPA area. Councillor Katris will partake in any deliberations on this matter and will remain the meeting and participate in the consideration and voting on this item.

Councillor Katris declared a Non-Significant Non-Pecuniary Interest in item **ENV010-24 Outcomes of Public Exhibition – Housekeeping Planning Proposal** for the reason he is a part owner of his place of residence in Blakehurst. The Housekeeping Planning Proposal does not have any impact on him. Councillor Katris will remain in the meeting and take part in consideration and voting on this item.

Councillor Jamieson declared a Non-Significant Non-Pecuniary Interest in item **ENV010-24 Outcomes of Public Exhibition – Housekeeping Planning Proposal** for the reason she has a property in the LGA and this item discusses the whole LGA. However, as there is purely administrative amendments and there is no pecuniary interest, there is no special or other pecuniary interest to declare. Councillor Katris will remain in the meeting and take part in consideration and voting on this item.

PUBLIC FORUM

	Name	Report No.	Report Title
1	Sylvia Nilsen (In person)	ENV008-24	Outcomes of Community Consultation and Preparation of Biodiversity and Character Planning Proposal
2	Matthew Alison (In person)	ENV008-24	Outcomes of Community Consultation and Preparation of Biodiversity and Character Planning Proposal
3	Jessie Kordic (In person)	ENV010-24	Planning proposal -Housekeeping amendments to Georges River LEP2021

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Note: It was noted that Councillor Wang left the Chambers at 7.18pm

ENV007-24 Confirmation of the Minutes of the Environment and Planning Committee Meeting held on 12 February 2024

(Report by Executive Assistant to Director Business and Corporate Services)

RECOMMENDATION: Councillor Landsberry, Councillor Jamieson

That the Minutes of the Environment and Planning Committee Meeting held on 12 February 2024, be confirmed.

Record of Voting

For the Motion: Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihapahar, Councillor Jamieson, Councillor Katris, Councillor Landsberry

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

Note: It was noted that Councillor Wang returned to the Chambers at 7.22pm

Note: It was noted that the Mayor, Councillor Elmir joined the meeting at 7.23pm

COMMITTEE REPORTS

ENV008-24 Outcomes of Community Consultation and Preparation of Biodiversity and Character Planning Proposal
(Report by Principal Strategic Planner)

RECOMMENDATION: Councillor Katris, Deputy Mayor, Councillor Borg

- (a) That Council notes the outcomes of the pre-exhibition community consultation conducted for the proposed implementation of the *Biodiversity Study* and *Foreshore Scenic Character Study*.
- (b) That Council endorses the preparation of the Biodiversity and Character Planning Proposal to amend the *Georges River Local Environmental Plan 2021*, comprising of the following components:
 - (i) Introduce new biodiversity planning provision and mapping overlay to preserve and protect areas of moderate and high terrestrial biodiversity values,
 - (ii) Introduce new local character planning provision and mapping overlay to provide statutory protection to Unique Character Areas (UCA),
 - (iii) Amend the existing Foreshore Scenic Protection Area (FSPA) planning provision and mapped extent to ensure the role of the FSPA focuses on foreshore scenic character,
 - (iv) Retain existing lot size requirements within areas removed from the existing FSPA as follows:
 - A. Subdivision lot size: 700sqm
 - B. Dual occupancy lot size: 1,000sqm
 - (v) Increase lot size requirements for areas proposed to be added to the proposed FSPA and/or UCA as follows:
 - A. Increase subdivision lot size from 450sqm to 700sqm
 - B. Increase dual occupancy lot size from 650sqm to 1,000sqm
 - (vi) Reduce the maximum permissible FSR for R2-zoned land located within the existing FSPA, proposed FSPA and the proposed UCA from 0.55:1 for dwelling houses and 0.6:1 for dual occupancies to 0.5:1 for all development typologies,

- (vii) Amend the landscaped area planning provision to:
- A. Protect, maintain and improve the diversity and condition of native vegetation and habitats across the Local Government Area (LGA),
 - B. Encourage the recovery of threatened species and their communities, populations and habitats across the LGA, and
 - C. Retain and strengthen the green and leafy character of the LGA, including trees in the private domain that contribute to local character and visual amenity,
- (viii) Increase the minimum landscaped area requirement for dwelling houses and dual occupancies by 5% to 30% and 35% respectively for R2-zoned land located within the existing FSPA, proposed FSPA and the proposed UCA,
- (ix) Introduce minimum 20% landscaped area requirement for multi dwelling house, terraces and manor houses in response to the NSW Government's Low and Mid-Rise Housing Reform, and
- (x) Request Department of Planning, Housing and Infrastructure to exclude the application of the *Low-Rise Housing Diversity Code* from the proposed FSPA and proposed UCA to ensure dual occupancies, manor houses, multi dwelling housing and terraces are only permitted through the Development Application process.
- (c) That all persons who made a submission be advised of Council's decision.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Katris, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

ENV009-24 Revised Population and Dwelling projections for Georges River Local Government Area (Report by Strategic Planner)

RECOMMENDATION: Councillor Katris, Councillor Landsberry

- (a) That Council endorse the Georges River Council *Evidence Base for the Local Housing Strategy* (March 2023) and Georges River *Population Forecast Adjustment* (September 2023) as strategic planning documents that will inform the development of policies and planning directions.
- (b) That Council place the Georges River Council *Evidence Base for the Local Housing Strategy* (March 2023) and the Georges River *Population Forecast Adjustment* (September 2023) on Council's website.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Katris, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

ENV010-24 Outcomes of Public Exhibition - Housekeeping Planning Proposal
(Report by Strategic Planner)

RECOMMENDATION: Deputy Mayor, Councillor Borg, Councillor Ambihaipahar

- (a) That Council note the submissions received during the public exhibition of the Planning Proposal PP2023/0002 for the housekeeping amendment to the Georges River Local Environmental Plan 2021.
- (b) That Council adopt the proposed amendments included in the Planning Proposal PP2023/0002 as exhibited.
- (c) That Council forward the Planning Proposal for gazettal to the Department of Planning, Housing and Infrastructure (DPHI) in accordance with Section 3.36 of the Environmental Planning and Assessment Act 1979.
- (d) That all persons who made a submission to the Planning Proposal be advised of Council's decision.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Katris, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

ENV011-24 Review of Council Policies – Environment, Health and Regulatory Services
(Report by Manager Environment Health & Regulatory Services)

RECOMMENDATION: Councillor Landsberry, Councillor Katris

(a) That Council endorse the following draft Policies, as attached to this report, for the purpose of public exhibition for a minimum period of 60 days, in accordance with Section 160 of the *Local Government Act, 1993*:

- Management of Feral and Infant Companion Animals Policy (2024) (Attachment 1).
- Georges River Smoke Free Policy for Outdoor Areas (2024) (Attachment 2).
- Georges River Council Enforcement Policy (2024) (Attachment 3).
- Keeping of Animals Policy (2024) (Attachment 4).

(b) That a further report be provided to Council on the outcomes of the public exhibition.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Katris, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

ENV012-24 T23/005 Provision of Animal Management Services
(Report by Team Leader Procurement and Contracts Governance)

RECOMMENDATION: Councillor Landsberry, Councillor Ambihaipahar

- (a) That in accordance with Section 178(1)(a) of the Local Government (General) Regulation 2021, Council accepts the Tender from St George Animal Rescue Pty Ltd (ABN: 60 002 795 771) for T23/005 Provision of Animal Management Services, as outlined in the confidential attachments.
- (b) That the General Manager be authorised to execute the Contract with the successful Contractor on behalf of Council.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Katris, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

Note: Councillor Katris left the Chambers at 08:10pm and did not return to the meeting.

ENV013-24 Draft Merriman Reserve Plan of Management and Master Plan for Exhibition
(Report by Coordinator Strategic Planning)

RECOMMENDATION: Councillor Landsberry, Deputy Mayor, Councillor Borg

- (a) That Council notify the draft Merriman Reserve Plan of Management and Master Plan to the NSW Department of Planning, Housing and Industry, as the representative landowner of part of the land under section 39 of the *Local Government Act 1993*, to obtain owner's consent prior to public exhibition.
- (b) That Council seek written consent from the NSW Department of Planning, Housing and Infrastructure to adopt the draft Plan of Management, in accordance with section 3.23(6) of the *Crown Land Management Act 2016*.
- (c) That Council delegates authority to the General Manager to make any further amendments to the draft Merriman Reserve Plan of Management and Master Plan to address any points raised by the NSW Department of Planning, Housing and Infrastructure and make minor modifications to any numerical, typographical, interpretation and formatting errors if required.
- (d) That Council endorse the draft Merriman Reserve Plan of Management and Master Plan for public exhibition for a period of no less than 28 days and allow submissions to be received up until 42 days in accordance with section 38 of the *Local Government Act 1993*.
- (e) That Council endorse the proposed changes to the land categorisation and hold a public hearing under section 40A of the *Local Government Act 1993*.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

ENV014-24 Review of the Affordable Housing Policy
(Report by Manager Strategic Planning)

RECOMMENDATION: Councillor Jamieson, Councillor Borg

- (a) That Council endorse the Affordable Housing Policy, as attached to this report, for the purpose of public exhibition for a minimum period of 60 days, in accordance with Section 160 of the Local Government Act, 1993
- (b) That a further report be provided to Council on the outcomes of the public exhibition.

Record of Voting

For the Motion: Mayor, Councillor Elmir, Deputy Mayor, Councillor Borg, Councillor Mahoney, Councillor Ambihaipahar, Councillor Jamieson, Councillor Landsberry, Councillor Wang

On being PUT to the meeting, voting on this Motion was UNANIMOUS. The Motion was CARRIED.

CONCLUSION

The Meeting was closed at 8.22pm.

Chairperson

UNCONFIRMED MINUTES

COMMITTEE REPORTS**Item:** ENV016-24 Draft Principal Certifier Complaints Policy 2024**Author:** Business Improvement Officer**Directorate:** Environment and Planning**Matter Type:** Committee Reports

ENV016-24

RECOMMENDATION:

- (a) That the Council endorses the Draft Principal Certifier Complaints Policy 2024 for community consultation for a period of 60 days.
- (b) That a further report will be provided to Council following the exhibition period.

EXECUTIVE SUMMARY

1. A Draft Principal Certifier Complaints Policy has been prepared and is presented to Council for endorsement for community consultation. Attachment 1 contains the draft Policy.
2. The purpose of the Draft Policy is to inform the community on the role of the Principal Certifier, Georges River Council and Building Commission NSW in relation to complaints received regarding development sites, as well as provide clear advice on Georges River Council's process of handling complaints relating to the management of development sites.
3. The Draft Policy contains definitive scenarios in which the Georges River Council will respond to specific complaints when a Private Certifier has been appointed the Principal Certifier. The draft scenarios exceed Local Government legislative obligations are above and beyond the standard scenarios endorsed by Local Councils across NSW.
4. The Draft Policy supports Council's Enforcement Policy and Customer Feedback and Complaints Management Policy which was adopted by Council in September 2021 and 2023, respectively.
5. The Draft Policy serves as a foundation for Georges River Council's Certification Campaign Lobby for Change.
6. The exhibition of the draft Policy will be undertaken in accordance with the Council's Community Engagement Strategy and will be exhibited for a period of 60 days. Targeted feedback on the draft Policy will also be sought from the industry sector, government agencies and interested community members.

BACKGROUND

7. In August 2022, Georges River Council (GRC) resolved to commence a lobbying campaign on the NSW Government for increased accountability to Private Certifiers. The resolution was adopted because of longstanding community concerns relating to Private Certifiers approving Complying Development Certificates and issuing Occupation Certificates for non-compliant work, as well as their management over the physical development site and dismissal of community concerns.
8. To commence the lobbying campaign, GRC facilitated Community Consultation from November 2022 until January 2023. A prevalent finding from the consultation period was

community frustration and confusion surrounding the limitations of Local Councils when a Private Certifier has been appointed the Principal Certifier of a development.

9. Other findings from the Community Consultation include (in descending order of prevalence):
- (1) Private Certifiers were uncooperative and dismissive to community concerns and complaints.
 - (2) Local Councils need stronger controls.
 - (3) Neighbours did not receive pre-construction notification.
 - (4) Council only intervenes once breaches have been made.
 - (5) Private Certifier details are not visible at the development site.
 - (6) Environmental impacts of non-compliance.
 - (7) Lack of community access to plans.
 - (8) Deviation from plans during development.
 - (9) Impact to neighbour privacy and property.
 - (10) Private Certifier delegation of inspections and oversight to builders.
 - (11) Development site abandonment.
 - (12) NSW State Government lacks adequate audit and regulation processes required to govern Private Certification industry.
10. In March 2023, senior staff of Southern Regional Organisation of Councils (SSROC), General Manager and Director of Environment and Planning met with David Chandler (NSW Building Commissioner) and his staff. The purpose of this meeting was to outline the concerns and issues faced by Councils and the community in relation to developments and building sites managed by Private Certifiers. In this meeting, GRC offered to draft a policy document that outlines the role of Council in dealing with sites managed by Private Certifiers. It was proposed that the document would be a template to be used by other Local Councils in NSW.
11. In April 2023 Council resolved to support the above offer and committed to obtain legal advice and develop a policy and set of procedures that outline the role of the Principal Certifier, Council and Building Commission NSW in relation to addressing issues relating to development approvals and building sites managed by Private Certifiers.
12. Legal advice was obtained from HWL Ebsworth in June 2023 which confirmed that when a Private Certifier is the Principal Certifier for a development, they are responsible for conducting inspections and ensuring building and construction complies with the approvals. As the Principal Certifier is the independent regulatory authority, Council has limited jurisdiction over the site and is obliged to direct enquiries to Private Certifiers.
13. The policy was drafted and the main headings of the draft policy were presented during a Councillor Workshop in March 2024.

SUMMARY OF DRAFT POLICY

14. The Draft Policy confirms that when a Private Certifier is appointed as the Principal Certifier (PC) they are the regulatory authority over the development site and are legally required to fulfill all responsibilities of the PC. The PC has statutory responsibilities and authorities under the Environmental Planning and Assessment Act 1979.
15. When a Private Certifier is appointed as PC, the Council has limited jurisdiction over the development site and limited access to various professional reports that may be produced

during the construction phase (for example, engineering certification or survey information). These reports are only lodged on the NSW Government's Planning Portal by the Private Certifier once an Occupation Certificate has been issued – they are not lodged with Council.

16. The Draft Policy clarifies the differing roles between Council, Private Certifiers and the Building Commission NSW and explains Council's limited ability to intervene in complaints against the PC. It also covers the responsibilities of property owners and builders in relation to development sites.

Council:

17. Due to the limited access and statutory jurisdiction Council holds over a Privately Certified development site, Council will refer all complaints to the Private Certifier in the first instance.
18. The Draft Policy stipulates that Council will only act on complaints received in relation to a Privately Certified development site in the following 10 instances. Please note that the instances described in point 6, 7, 8, 9 and 10 are unprecedented across NSW Local Governments and indicative of GRC's commitment to coregulation of the Private Certification industry:
- (1) When the Private Certifier has issued a Work Direction Notice that was not complied with in the specified time frame.
 - (2) When a Private Certifier's response to a complaint is considered inadequate or Council does not agree with the Private Certifier's position, for example, failure to issue a WDN despite being aware of non-compliant work.
 - (3) If a complaint relates to work that may not form part of a development consent and is therefore outside the realm of responsibility for the Private Certifier.
 - (4) When a complaint relates to breaches of housekeeping or environmental conditions of consent that are generally enforced by Council Rangers including hours of work, footpath and roadway obstructions, odours and fumes, noise, dust, sediment control and discharges.
 - (5) If the work of the Private Certifier threatens life, safety or damage to property or the environment at the time of the complaint and immediate action is required. For example, works would impact the safety or structural integrity of a property or have an irreversible and significant impact on the biodiversity, waterways or natural formations (i.e., rock face) of the area.
 - (6) The complaint relates to the damage of heritage items listed in Georges River LEP 2021 or buildings and structures listed as Contributory Items in Heritage Conservation Areas listed in the Georges River Development Control Plan, in Heritage Conservation Areas.
 - (7) The complaint relates to the protection of trees.
 - (8) The complaint relates to the protection of the Foreshore Scenic Protection Area. For example, the removal of natural rock face, extensive clearing of land, excessive excavation and works that result in a permanent change of natural waterflow or channel.
 - (9) The complaint relates to the negligence or mismanagement of a PC's statutory responsibilities that result in safety or damage to property or the environment. These responsibilities include:
 1. earthworks,

2. stormwater drainage work,
 3. landscaping work,
 4. erosion and sediment control work,
 5. excavation work,
 6. structural work,
 7. hydraulic work, and
 8. external finishes of a building.
- (10) When a complainant has attempted to contact the PC on at least 3 occasions in relation to one of the 9 scenarios listed above and has not received a response. Documentary evidence of submitted complaints is required in this scenario.

Private Certifier:

19. When a Private Certifier is appointed as PC, they take responsibility for the development site and are required to fulfill all roles of the PC.
20. The Draft Policy lists the main roles of the PC based on the Practice Standard for Registered Certifiers:
 - (1) Issue Construction Certificates and ensure building works comply with the National Construction Code (NCC).
 - (2) Issue Occupation Certificates or Partial Occupation Certificates which indicate that the building, or part thereof, has been finalised and is suitable for occupancy.
 - (3) Issue Compliance Certificates specifying that conditions of consent have been satisfied or that work complies with the plans and specifications of the development under the NCC.
 - (4) Issue Complying Development Certificates, certifying that nominated development proposals comply with standards and criteria in the State Environmental Planning Policy (Exempt and Complying development Codes) 2008.
 - (5) Notify the neighbouring areas of the intent to start work and be the contact for community concerns regarding the works. For a CDC, neighbours living within a 20-metre radius are required to be notified of intent to commence work.
 - (6) Manage and assess the required inspections associated with the building works or subdivision works.
21. In relation to Complaint Management, the Draft Policy refers to the Practice Standard for Registered Certifiers (Volume Two), published by Fair Trading NSW in 2022, in identifying the industry accepted practise for investigating and responding to community complaints about the development site. Private Certifiers are expected to make the appropriate investigation into the complaint, take appropriate rectification measures and respond to a verbal complaint within 48 hours and written complaint within 14 working days.

Building Commission NSW:

22. Regulates the conduct of all registered certifiers (Private Certifiers as well as Council Certifiers) in New South Wales and is responsible for issuing and maintaining certification accreditations.

23. The Draft Policy, based on legislation, lists that the Building Commission NSW can:
- (1) Investigate the conduct of a Private Certifier or Council Certifier and take disciplinary action where required.
 - (2) Provide dispute resolution between a homeowner and the builder if the matter is in relation to defective or incomplete residential building work.
 - (3) Assist in resolving disputes where damage has occurred due to building works at a neighbouring property if these works were carried out by a licensed builder or tradesperson.
 - (4) Immediately suspend a certifier if they have been issued a Show Cause notice by the courts or are undergoing disciplinary action, and there is a danger of significant harm if the certifier is not suspended.
24. The Draft Policy lists that the Building Commission NSW cannot:
- (1) Order building work to stop.
 - (2) Act on complaints against property owners unless the owner is an owner-builder.
 - (3) Declare a development certificate (CDC, CC and OC) invalid, even if it was issued improperly.
 - (4) Investigate general complaints against councils, including how a council exercises its enforcement powers.

NEXT STEPS: LOBBYING FOR CHANGE

25. GRC acknowledges the lack of regulation and accountability within the Private Certification Industry. Following the resolution dated August 2022, GRC have commenced a "Lobbying For Change" Campaign, designed to push for greater co-regulation and enforcement powers for Councils within the Private Certification industry.
26. The campaign focuses on addressing the prevalent concerns identified in the community consultation in 2022. The following focus areas are currently being pursued:
27. Public Complaints Database as component of the NSW Planning Portal:
- (1) Database to allow community to publicly lodge complaints relating to specific development site, identified by street address.
 - (2) Database to allow Private Certifier to publicly respond to community complaints, lessening rework and indemnifying Private Certifier from accusations of ignoring/dismissing complaints.
 - (3) Database of this nature allows Local Councils and NSW Building Commission to easily monitor and view history of escalated complaints.
28. *Proposed Actions:*
- (1) The possibility of a Public Complaints Database was discussed NSW President of Planning Institute of Australia in March 2024. It was noted that a database of this scale would be a long-term project for the NSW Department of Planning and Environment e-Planning team.
 - (2) Business case for Public Complaints Database to be drafted and submitted to Building Commission NSW.
 - (3) Business case for Public Complaints Database to be discussed with Industry Bodies such as Association of Australian Certifiers (AAC), as database has numerous benefits to Private Certification Industry.

- (4) Business case to be lobbied in working groups such as the LGNSW and Office of Building Commissioner Working Groups.
29. CDC Plans to be publicly available on the NSW Planning Portal:
- (1) CDC plans to be publicly available in the same way DA plans are publicly available. Public access to CDC plans will alleviate the serious issues associated with non-compliant Private Certification practices. Specifically, public access to CDC plans allows:
 - (2) Neighbouring properties to anticipate impact of development e.g. privacy, light, boundaries.
 - (3) Community to callout non-compliant work before construction.
30. *Proposed Actions:*
- (1) Utilise NSW Planning Portal Working Groups and Forums (to which GRC are already part-taking), to advocate for required legislative and digital changes, allowing CDC plans to be publicly accessed.
 - (2) Submit suggestion paper to Building Commission NSW, requesting required changes to NSW Planning Portal.
 - (3) Liaise with Industry Bodies (i.e., AAC) to garner support for changes.
31. Local Government Contribution Portal Control:
- (1) Lobbying for system control to disallow a Private Certifier from issuing an Occupation Certificate unless the Local Government Contributions have been paid.
 - (2) Specific request for the same control currently used for the State Infrastructure Levy (Housing and Productivity Contribution) to be applied for Local Government contributions.
32. *Proposed Actions:*
- (1) Utilise NSW Planning Portal Working Groups and Forums (to which GRC are already part-taking), to advocate for required legislative and digital changes, allowing CDC plans to be publicly accessed.
 - (2) Submit suggestion paper to Building Commission NSW, requesting required changes to NSW Planning Portal.
33. Councils provided with greater regulatory power and ability to issue fines to Private Certifiers for breaches relating to:
- (1) Failure of Private Certifier and Property Owner in issuing Preconstruction Notification.
 - (2) Failure to display appropriate signage with Private Certifier contact details on development site.
 - (3) Contravening regulated construction hours.
 - (4) Non-compliance with conditions of consent and deviation from CDC plans and approvals.
34. *Proposed Actions:*
- (1) Submit a discussion paper to Building Commission NSW, requesting a suitable approach to co- regulation of private certifiers.

FINANCIAL IMPLICATIONS

35. No budget impact for this report. However, some of the actions will have financial implications which will be reported to Council when required.

RISK IMPLICATIONS

36. No risks identified.

COMMUNITY ENGAGEMENT

37. Community engagement on the draft Policy will be conducted for a period of 60 days via an advertisement in the local paper and requesting feedback on the Your Say page of Council's website.
38. Targeted consultation will occur, with key stakeholders including industry groups, government agencies and interested community members to seek comment on the draft Policy.

FILE REFERENCE

D24/84788

ATTACHMENTS

Attachment [↓](#)1 Draft Principal Certifier Complaints Policy 2024





Principal Certifier

COMPLAINTS POLICY

Draft – April 2024

Policy administration

Dates	Policy approved <i>xx/xx/xxxx</i> This policy is effective upon its approval. Policy is due for review <i>xx/xxxx</i>
Approved by	Council Meeting <i>xx/xx/xxxx</i> Council Resolution <i>xxx</i>
Policy Type	Council Policy
Exhibition Period	<i>Include date of exhibition to the public or consultative committee, if relevant</i>
Policy Owner	Director Environment and Planning
Related Documents	Georges River Council Enforcement Policy adopted by Council on 27 September 2021 Practice Standard for Registered Certifiers – Volume Two – Class 1a Buildings October 2022
References & Legislation	Building and Development Certifiers Act 2018 Building and Development Certifiers Regulation 2020 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2021
Document Identifier	Policy #: <i>Allocated by Senior Policy Specialist once policy is approved (includes the version number)</i> Doc #: <i>Please enter CM9/Document identification number</i>
Breaches of Policy	Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation.
Record Keeping	All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the NSW State Records Act 1998, Georges River Council's Corporate Records Policy and adopted internal procedures.

Purpose

- To outline the roles of the Principal Certifier, Georges River Council and Building Commission NSW in relation to complaints received regarding development sites.
- To outline the responsibilities of property owners and builders in relation to complaints received regarding development sites.
- To provide clear advice to the community on Georges River Council’s process of handling complaints relating to the management of development sites.
- To define when Georges River Council will respond to a complaint lodged in respect of a development site when a Private Certifier has been appointed the Principal Certifier.

Scope

This policy applies to the handling of all complaints received by Georges River Council relating to development activity on a site where a Principal Certifier has been appointed. This Policy supports the [Council’s Enforcement Policy](#).

Georges River Council is leading a campaign to expand Council’s intervention and enforcement powers relating to Private Certifiers operating in the LGA. As part of this campaign Council is seeking to increase the accountability of Private Certifiers on development sites. If successful, Council will update this Policy to reflect the changes.

Definition of Terms

Term	Meaning
Building Commission NSW	Building Commission NSW was established on 1 December 2023. It replaced Fair Trading NSW as regulator of the building and construction industry.
Complying Development Certificate	<p>Known as a CDC.</p> <p>A CDC combines approval for use of the land and the building works. It is basically, a fast-track single-stage approval process, which requires only a CDC to be obtained from a Council or Private Certifier.</p> <p>If all of the criteria, requirements and standards relating to the proposed building or use are satisfied via an application containing relevant plans, specifications and supporting information, a Council or Private Certifier will issue a Complying Development Certificate.</p> <p>Full details of the types of development that can be approved as a Complying Development can be found in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</p>

Term	Meaning
Construction Certificate	<p>Known as a CC.</p> <p>After a Development Application has been approved by Council, the owner of the site may be required to obtain a Construction Certificate before work can commence work. A Construction Certificate confirms that:</p> <ul style="list-style-type: none"> • Construction plans and specifications meet development standards, for example, those set by the National Construction Code (NCC). • Construction plans and specifications are within the thresholds of the Council's development consent. <p>A Construction Certificate can be obtained from Council or an accredited certifier.</p>
Complying Development Certificate	<p>Known as a CDC.</p> <p>A CDC combines approval for use of the land and the building works. It is basically a fast-track single-stage approval process, which requires only a CDC to be obtained from a Council or Private Certifier.</p> <p>If all of the criteria, requirements and standards relating to the proposed building or use are satisfied via an application containing relevant plans, specifications and supporting information, a Council or Private Certifier will issue a Complying Development Certificate.</p> <p>Full details of the types of development that can be approved as Complying Development can found in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</p>
Contributory Item	<p>A Contributory item can be a building, structure or landscape that contributes to the heritage significance of a heritage conservation area. Contributory Items are listed in Georges River Development Control Plan.</p>
Council	<p>Georges River Council</p>
Council Certifier	<p>A Council Certifier must be accredited by the Building Commission NSW. When accredited, a certifier is given a unique number which is used on all documents to identify the certifier.</p> <p>A Council Certifier is a building professional who can act as a Principal Certifier (PC) and is responsible for inspecting and approving the building work within the Council's Local Government Area, to ensure a development is in accordance with approved plans and state legislative requirements.</p>

Term	Meaning
Development Applications	<p>Known as a DA.</p> <p>A DA is a formal application submitted to Local Council for permission to carry out a new development. It is required when the proposed development does not completely comply with State Environmental Planning Policy standards.</p>
Foreshore Scenic Protection Area	<p>The Foreshore Scenic Protection Area is a continuous area along the foreshore that is visible from the Georges River with significant character, environmental and scenic values. It is identified on the Foreshore Scenic Protection Area Map and by a local provision clause in Part 6 of the Georges River Local Environmental Plan (LEP) 2021.</p>
Occupation Certificate	<p>Known as an OC.</p> <p>An Occupation Certificate certifies that a development is suitable and safe to be occupied in line with the requirements established by The Building Code of Australia (BCA).</p> <p>Prior to a new development being occupied, the Principal Certifier must consider the health, safety, and amenity of future occupants of the building. The Principal Certifier can be Council or a Private Certifier.</p> <p>The Occupation Certificate must be completed and submitted to Council before completion of the work and prior to occupation of the development.</p> <p>For staged works, a Partial Occupation Certificate may be issued. A Partial Occupation Certificate allows residence in the completed part of the development.</p>
Principal Certifier	<p>Principal certifiers (PCs) are accredited professionals who issue certificates for development under the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The PC can either be a Council Certifier or a Private Certifier, specifically appointed by the owner of the property. The certificates issued by a PC include:</p> <ul style="list-style-type: none"> • Complying Development Certificate (CDC) • Construction Certificate (CC) • Occupation Certificate (OC) <p>In the assessment and the approval of these certificates the PC ensures that the proposed development complies with the planning provisions, the required technical standards and regulations.</p> <p>Once construction commences the PC has the responsibility of ensuring that building work is carried out in accordance with the conditions of the relevant certificate.</p>



Term	Meaning
Private Certifier	<p>A Private Certifier is a building professional who can act as a Principal Certifier and is responsible for inspecting and approving the building work to ensure it is in accordance with approved plans and state legislative requirements.</p> <p>A Private Certifier must be accredited by the Building Commission NSW. When accredited, a certifier is given a unique number which is used on all documents to identify the certifier. A certifier must be re-accredited each year.</p>
Trees	<p>In accordance with Council's Tree Management Policy, a tree is defined as having a:</p> <ul style="list-style-type: none"> • Height of 3 metres or more, or • Diameter of 100mm or more when measured at ground level; or • Branch spread of 3 metres or more.

1. Policy Statement

- 1.1. The extent of Council's role in regulating building work and addressing neighbours' concerns depends on whether Council has been appointed the PC for a development.
- 1.2. A PC must be appointed by the owner prior to the start of any building work. The PC can either be a Council Certifier or a Private Certifier. Over 90% of development activity within the Georges River Local Government Area is managed by Private Certifiers.
- 1.3. The PC is responsible for issuing Complying Development Certificates, Construction Certificates, Occupation Certificates; as well as ensuring compliance with the Building Code of Australia and criteria of the State Environmental Planning Policy.
- 1.4. When a Private Certifier is appointed as PC, the Council has limited authority over the development site and limited access to various professional reports that may be produced during the construction phase (for example, engineering certification or survey information). These reports are only lodged on the NSW Government's Planning Portal by the Private Certifier once an Occupation Certificate has been issued – they are not lodged with Council.
- 1.5. Council's inability to intervene on development sites where a Private Certifier is acting as PC is an area of frustration for the community. There is a common misconception that Council monitor Private Certification work, even when Council is not involved in the development.

1.6. This policy clarifies the differing roles between Council, Private Certifiers and the Building Commission NSW and explains Council's ability to assist with complaints against the PC. It also covers the responsibilities of property owners and builders in relation to development sites.

2. Roles of the PC, Council and the Building Commission NSW in relation to development sites

2.1. Principal Certifier's Role

2.1.1. The role of PC includes duties such as:

2.1.1.1. Issue Construction Certificates and ensure building works comply with the National Construction Code (NCC).

2.1.1.2. Issue Occupation Certificates or Partial Occupation Certificates which indicate that the building, or part thereof, has been finalised and is suitable for occupancy.

2.1.1.3. Issue Compliance Certificates specifying that conditions of consent have been satisfied or that work complies with the plans and specifications of the development under the NCC.

2.1.1.4. Issue Complying Development Certificates, certifying that nominated development proposals comply with standards and criteria in the *State Environmental Planning Policy (Exempt and Complying development Codes) 2008*.

2.1.1.5. Notify the neighbouring areas of the intent to start work and be the contact for community concerns regarding the works. For a CDC, neighbours living within a 20-metre radius are required to be notified of intent to commence work.

2.1.1.6. Manage and assess the required inspections associated with the building works or subdivision works.

2.1.2. A PC must be appointed by the owner prior to the commencement of work.

2.1.3 Council must be advised in writing of who has been appointed as the PC where a CC or CDC is issued.

2.1.4 When a Private Certifier is appointed as the PC they take responsibility for the development site and are required to fulfill all roles of the PC. The PC has statutory responsibilities and authority to govern various work, such as:

- earthwork,
- stormwater drainage work,
- landscaping work,
- erosion and sediment control work,
- excavation work,
- structural work,

- hydraulic work, and
- external finishes of a building.

2.1.5 The [Practice Standard for Registered Certifiers \(Volume Two\)](#) stipulates the expectations of a PC in relation to responding to complaints regarding development sites:

2.1.5.1 A PC must take suitable action to deal with complaints made by a member of the public in relation to work occurring on a development site.

2.1.5.2 The PC 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.

2.1.5.3 The PC 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 PC should inform the complainant and advise them of the steps being taken.

2.1.5.4 If the investigation reveals the need for rectification, the PC must first contact the principal contractor who is in a position to physically resolve the problems.

2.1.5.5 A verbal request may be appropriate to address the concerns, however, if the matter is potentially dangerous or is causing significant issues or environmental impact; it may be appropriate to issue Written Direction Notices (WDN).

2.1.6 The PC has the power to issue a WDN to a builder and/or owner under section 6.31 of the EP&A Act. The WDN provides specific instruction on how and when the non-compliance issue needs to be rectified.

2.1.7 If the WDN has not been adhered to in the specified timeframes, the PC must notify Council. In these circumstances, Council will work with PC to further investigate and rectify non-compliant work.

2.1.8 A PC who fails to take timely and appropriate action to address non-compliance issues may fall short of the Practice Standards stipulated by the Building Commission NSW to govern the industry.

2.1.9 The PC must make and keep a written record of each complaint they have received in relation to the development site including:

2.1.9.1 Any action taken by the PC, or

2.1.9.2 Any response made in relation to the complaint.

2.1.10 The record must be kept for 10 years from the date which the complaint was received by the principal certifier.

2.2. Council's Role when PC is a Private Certifier:

- 2.2.1 The legislation states that a PC is responsible for conducting inspections and ensuring building and construction complies with the approvals.
- 2.2.2 If the PC is a Private Certifier, Council has no authority over the actions of the PC. Council becomes the "keeper of the records" and is not directly involved in the management of the development site. The PC is an independent regulator.
- 2.2.3 By not being the PC, Council does not have ready access to construction information (e.g. timeframes, schedules etc) or professional reports like engineering certificates or survey information. These reports are not required to be submitted to Council until the final Occupation Certificate has been issued. The reports are lodged on the NSW Government's Planning Portal website and not with Council.
- 2.2.4 Council recognises this as a limitation on its ability to address general enquiries on a development site. Nevertheless, Council will work with PC to further investigate and rectify non-compliant work.
- 2.2.5 If the PC notifies Council of a WDN which has not been complied with, Council will work with the PC to further investigate and rectify non-compliant work.
- 2.2.6 Only Council can issue a formal order or take appropriate enforcement action under the legislation.
- 2.2.7 When Council is the PC, Council's Compliance Unit will regulate Certification processes.

2.3. Building Commission NSW's Role in dealing with PCs:

- 2.3.1 The Building Commission NSW regulates the conduct of all registered certifiers (Private Certifiers as well as Council Certifiers) in New South Wales and is responsible for issuing and maintaining certification accreditations. The Building Commission NSW can investigate complaints against licensed builders and tradespeople, registered certifiers, and councils in their capacity as certifying authorities.

2.3.2A Certifier is required to comply with the Code of Conduct under the Building and Development Certifiers Regulation 2020. The Code of Conduct requires certifiers to act in the public interest and abide by standards expected by the community.

2.3.3 The Building Commission NSW can:

2.3.3.1 Investigate the conduct of a Private Certifier or Council Certifier and take disciplinary action where required.

2.3.3.2 Provide dispute resolution between a homeowner and the builder if the matter is in relation to defective or incomplete residential building work.

2.3.3.3 Assist in resolving disputes where damage has occurred due to building works at a neighbouring property, if these works were carried out by a licensed builder or tradesperson.

2.3.3.4 Immediately suspend a certifier if they have been issued a Show Cause notice by the courts or are undergoing disciplinary action, and there is a danger of significant harm if the certifier is not suspended.

2.3.4 The Building Commission NSW currently does not have power to do the following:

2.3.4.1 Order building work to stop.

2.3.4.2 Act on complaints against property owners, unless the owner is an owner-builder.

2.3.4.3 Declare a development certificate (CDC, CC and OC) invalid, even if it was issued improperly.

2.3.4.4 Investigate general complaints against councils, including how a council exercises its enforcement powers.

2.3.5 More information on lodging a complaint about a private certifier can be found on Building Commission NSW website.

3 Responsibilities of property owners and builders

3.1 The property owner and the builder also have responsibilities in relation to their development sites.

3.2 The property owner is responsible for meeting the conditions of the Development Consent or Complying Development Certificate.

- 3.3 The builder is responsible for supervising the construction on the site and the work of subcontractors.
- 3.4 The builder must make sure that building work is done in accordance with the approved plans, the Building Code of Australia and Australian Standards.
- 3.5 The builder is responsible for requesting the Certifier facilitate critical stage inspections.

4 Council's process of handling complaints relating to the management of development sites when a Private Certifier is appointed the PC.

- 4.1 Council's role in building and construction work varies depending on whether or not Council has been appointed as the PC. If Council is appointed as the PC, Council must carry out all the roles and responsibilities of the PC.
- 4.2 If a Private Certifier has been appointed as PC then Council, in the first instance, will direct the complainant to the PC to address the issue. The community is encouraged to contact the PC whose details can be found on a sign at the front of the development site. Where these details are not displayed; Council's Customer Service can be contacted for assistance.
- 4.3 Complaints received by Council in written form will also be referred to the PC in the first instance to consider and investigate. Council will notify the complainant of this action and provide the PC's contact details.
- 4.4 Council refers complaints to the PC in the first instance because the Private Certifier is responsible for the development site. Council has limited access to construction information and building reports, as ongoing development is managed by the Private Certifier. Therefore, the Private Certifier will be familiar with the events occurring on the development site and should be able to effectively resolve complaints without the need for enforcement.
- 4.5 PCs have the power to issue a WDN to the builder/ owner, identifying the issue or non-compliance with the approved development plans and specifying requirements for rectification. The WDN outlines the timeframe for the issue to be resolved.
- 4.6 A WDN may be issued where consent conditions are breached or where building activities are failing to follow the approved plans.

- 4.7 If the requirements of the WDN are not complied with, the PC must send a copy of the direction to Council. Council can then take further enforcement action if required.
- 4.8 Council may also issue Penalty Notices (PN) for breaches of the EP&A Act on the owner and/or builder or can elect to commence court proceedings. Council cannot issue a PN on a PC.
- 4.9 All enforcement action will be considered in accordance with Council's [Enforcement Policy](#).

5 When will Council act on complaints about a development site where a Private Certifier has been appointed the Principal Certifier?

- 5.1 Council will only act on complaints received in relation to development sites where a Private Certifier is appointed the PC when:
 - 5.1.1 The work threatens life, safety or damage to property or the environment at the time of the complaint and immediate action is required. For example, works would impact the safety or structural integrity of a property or have an irreversible and significant impact on the biodiversity, waterways or natural formations (i.e., rock face) of the area.
 - 5.1.2 The complaint relates to work that may not form part of a development consent and therefore is not the responsibility of the Private Certifier.
 - 5.1.3 The Private Certifier's response to the complaint is considered inadequate or Council does not agree with the Private Certifier's position, for example, failure to issue a WDN despite being aware of non-compliant work.
 - 5.1.4 Where the Private Certifier has notified Council that their WDN has not been complied with.
 - 5.1.5 The complaint relates to breaches of housekeeping or environmental conditions of consent that are generally enforced by Council's Rangers including hours of work, footpath and roadway obstructions, odours and fumes, noise, dust, sediment control and discharges.
 - 5.1.6 The complaint relates to the damage of heritage items listed in Georges River LEP 2021 or buildings and structures listed as Contributory Items in Heritage Conservation Areas listed in the Georges River Development Control Plan, in Heritage Conservation Areas.
 - 5.1.7 The complaint relates to the protection of trees.
 - 5.1.8 The complaint relates to the protection of the Foreshore Scenic Protection Area. For example, the removal of natural rock face, extensive clearing of land, excessive excavation and works that result in a permanent change of natural waterflow or channel.
 - 5.1.9 The complaint relates to the negligence or mismanagement of a PC's statutory responsibilities, as listed in section 2.1.4, that results in safety or damage to property or the environment.

5.1.10 The complainant has contacted the PC on at least 3 occasions and has not received a response and the matter relates to 5.1.1 to 5.1.9 above. Note - documentary evidence is to be provided on the complainants attempts to contact the PC.

5.2 The factors that Council will take into consideration to determine if a Private Certifier's handling of a complaint is adequate include:

5.2.1 Timeliness of the investigation, having regard to the seriousness of the complaint.

5.2.2 Whether the Private Certifier demonstrates a genuine commitment to address the issues.

5.2.3 Appropriateness of the action taken, including whether a physical inspection has been undertaken and whether any professional reports have been relied on.

5.2.4 Whether the Private Certifier keeps the customer and Council informed.

5.3 Council has a range of enforcement powers under the EP&A Act where compliance with a Development Approval or Complying Development Certificate is not occurring.

5.4 The main compliance power is Development Control Orders (under Section 9.34 and Schedule 5 of the EP&A Act), which authorise Council to issue instructions in specific circumstances to persons, requiring them to undertake, or to refrain from, certain actions. Development Control Orders can only be issued on the owner – not the PC.

5.5 Council can also issue a Stop Work Order under Schedule 5 of the EP&A Act to stop building work where the provisions of the EP&A Act have been breached, the continuation of the build is not considered appropriate, or the works affect the structural integrity of adjoining properties. Stop Work Orders can only be issued on the owner and/or the builder – not the PC. A Stop work Order can be issued on the whole site or on particular aspects of the development.

5.6 In cases not involving an emergency, Council must first give the intended recipient of the order, a Notice setting out the proposed terms of the order and the proposed period for compliance. The Notice must also indicate that the person may make representations as to why the order should not be given. Council may also issue Penalty Notices for breaches of the EP&A Act or can elect to commence court proceedings.

5.7 All enforcement action taken will be considered in accordance with Council's [Enforcement Policy](#).

Responsibilities

Position	Responsibility
Staff (Authorised Officer)	<ul style="list-style-type: none"> To effectively participate in policy training To follow the policy as outlined To report any barriers or concerns relating to policy implementation to the Coordinator without undue delay To effectively participate in document review. To make decisions relating to the investigation of complaints relating to development sites with the support of the Coordinator
Coordinator	<ul style="list-style-type: none"> To effectively train, guide and monitor staff in policy implementation To effectively respond to reported concern or barriers to policy implementation Be an active advocate for policy implementation Effectively coordinate and participate in policy review Ensure policy requirements remain consistent with Council Policy and Organisational objectives. To review decisions relating to investigation of complaints relating to development sites with the support of the Coordinator
Manager	<ul style="list-style-type: none"> To effectively respond to reported concern or barriers to policy implementation Be an active advocate for policy implementation Effectively coordinate and participate in policy review Ensure policy requirements remain consistent with Council Policy and Organisational objectives.



Position	Responsibility
Councillors	<p>To refer customers that have complaints relating to development sites to this Policy.</p> <p>Councillors are not to make decisions around the way complaints relating to development sites are investigated and/or prosecuted.</p> <p>Councillors are prohibited from involvement in the day to day operational and management decisions around enforcement and prosecution.</p> <p>Councillors can assist individuals who raise concerns with them by satisfying themselves that the Council’s policies are being carried out correctly</p>

Version Control and Change History

Version	Amendment Details	Policy Owner	Period Active
1.0	Private Certifier Complaints Policy	Director Environment and Planning	Xx/xx/xxxx

