

## Guiding Development — Practice Notes

# The role of the principal certifying authority

**The purpose of this practice note is to provide advice on the role of the principal certifying authority (PCA) — public or private sector — in the construction stage of the development process.**

## A legal requirement

The *Environmental Planning and Assessment Act 1979* (the Act) requires a PCA to be appointed before commencement of work on a development site. The PCA is nominated by the applicant and may be either a council or an accredited certifier (authorised to act as such). From appointment, the PCA is liable and has a duty of care in relation to any advice given and action taken (or not taken) in assuming the role under the legislation. In relation to building work, the PCA must assess whether the building is suitable for occupation or use in accordance with its classification under the Building Code of Australia (BCA) before issuing an occupation certificate. A PCA must also be appointed to issue the subdivision certificate. (Note: council will be the PCA for subdivision work unless the relevant local environmental plan specifically allows private certification of subdivisions.)

## What is meant by 'suitable for occupation'?

The BCA sets the standards to be met for the design and construction of various classes of building. This ensures that minimum levels of health, safety and amenity are provided for people who use the building. The PCA can check design and construction details by relying upon certificates, or other documentary evidence, from other professionals.

If the building is structurally sound, the relevant health, safety and amenity measures have been provided within and for the building (for example, exits, balustrading, hose reels, water supply/drainage, emergency lighting) and a fire safety certificate has been issued, the PCA can be satisfied that the building is suitable for occupation or use.

If the council is the PCA there is a right of appeal against a refusal to issue a final occupation certificate (within 12 months). For appeal purposes there is also a deemed refusal period of 14 days.

## Who can act as PCA?

The applicant can choose either the local council or a qualified professional to act as the PCA.

Applicants often use the person who issued the construction certificate as the PCA. The new system allows for flexibility, to meet differing needs. Some applicants may use the council to issue the construction certificate, but switch to a private sector professional to be the PCA, or vice versa.

A private sector PCA must be an accredited certifier (who is authorised to operate as a PCA), which means they must have met the required professional standards and have appropriate insurance cover. Details on contacts and qualifications of local accredited certifiers can be obtained from the professional associations that determine who can be accredited. See Practice Note: *Who is an accredited certifier?* which provides contact details for the professional associations.

Local councils should ensure that these requirements are made clear to intending applicants — that there is a choice between the council and the private sector, and that a private PCA must be an appropriately authorised accredited certifier. An advisory note should be provided with the consent conditions.

### **Appointing a private PCA — entering a service agreement**

Applicants and a private PCA will enter into a service agreement, outlining the information to be provided by the applicant, the PCA's tasks and professional responsibilities and a fee for service. The matters that might be included in a service agreement are indicated below.

### **Appointing the council — arrangements should be clear**

While it would be inappropriate for council to enter into a service agreement, it is recommended that it has a policy statement on how it will operate if chosen as the PCA. The matters that should be covered would be similar to those listed below for private sector service agreements.

### **When to appoint the PCA**

The PCA can be appointed any time up to two days before the building works commence. If using a private PCA, the applicant must advise council of the PCA's name and accreditation details two days before work begins. The PCA can arrange for this notice (form 7) on behalf of the applicant.

### **Role of PCA for houses, alterations/additions and small outbuildings**

An occupation certificate ensures that buildings are fit to occupy and marks the commencement of the 10-year liability run-off period. For most classes of building, it is an offence to occupy or use a building without one. It is not an offence to occupy a class 1a or 10 building, which includes a house. Nevertheless, applicants can request occupation certificates for these sorts of buildings and PCAs can issue them. Insurance companies and mortgagees may also want the security of occupation certificates for dwellings — an occupation certificate makes it clear for all parties when the 10-year run-off period starts. It will be a matter for the service agreement between the applicant and the private PCA (or council's policy statement) to indicate the intention in relation to these classes of building.

### **The content of a service agreement between an applicant and the PCA**

The following is a list of issues that may be covered in any agreement between an applicant and a private PCA.

#### **Administration and co-ordination**

The applicant agrees to supply:

- copies of the development application and consent (or complying development certificate)
- copies of the construction certificate(s), including plans and specifications (when applicable)
- detailed design plans and documentation before the construction of the particular element (where the PCA does not agree to make such arrangements).

The PCA agrees to:

- advise on requirements relating to the Home Building Act 1989
- arrange for the builder/applicant to give notice for inspections.

#### **Inspections and technical services**

The PCA agrees to advise on the arrangements for:

- detailed design and documentation — who will arrange; when they are required; where compliance certificates or consultant reports are required
- required inspections — the number and type; who will inspect; when compliance certificates (or consultant reports) are required
- specialist fire safety services
- analysis and/or inspections by other specialists
- any specific works to be completed or consent conditions satisfied before issuing occupation certificate(s)
- issuing an interim occupation certificate, if requested by the applicant
- issuing the final occupation certificate (including arrangements for class 1a or 10 buildings).

#### **Quality of service**

The PCA agrees to:

- act in a professional manner consistent with the Act and the code of conduct in the accreditation scheme
- advise on what they can certify and arrangements relating to liability
- advise on any conflict resolution arrangements between client and PCA, including mediation and/or contract termination if an accredited certifier is the PCA
- a time frame for the project.

#### **Payment of fees**

- Fee arrangements (lump sum, and/or fixed fee per inspection, plus agreed expenses)
- Fees for other specialists if arranged by PCA.

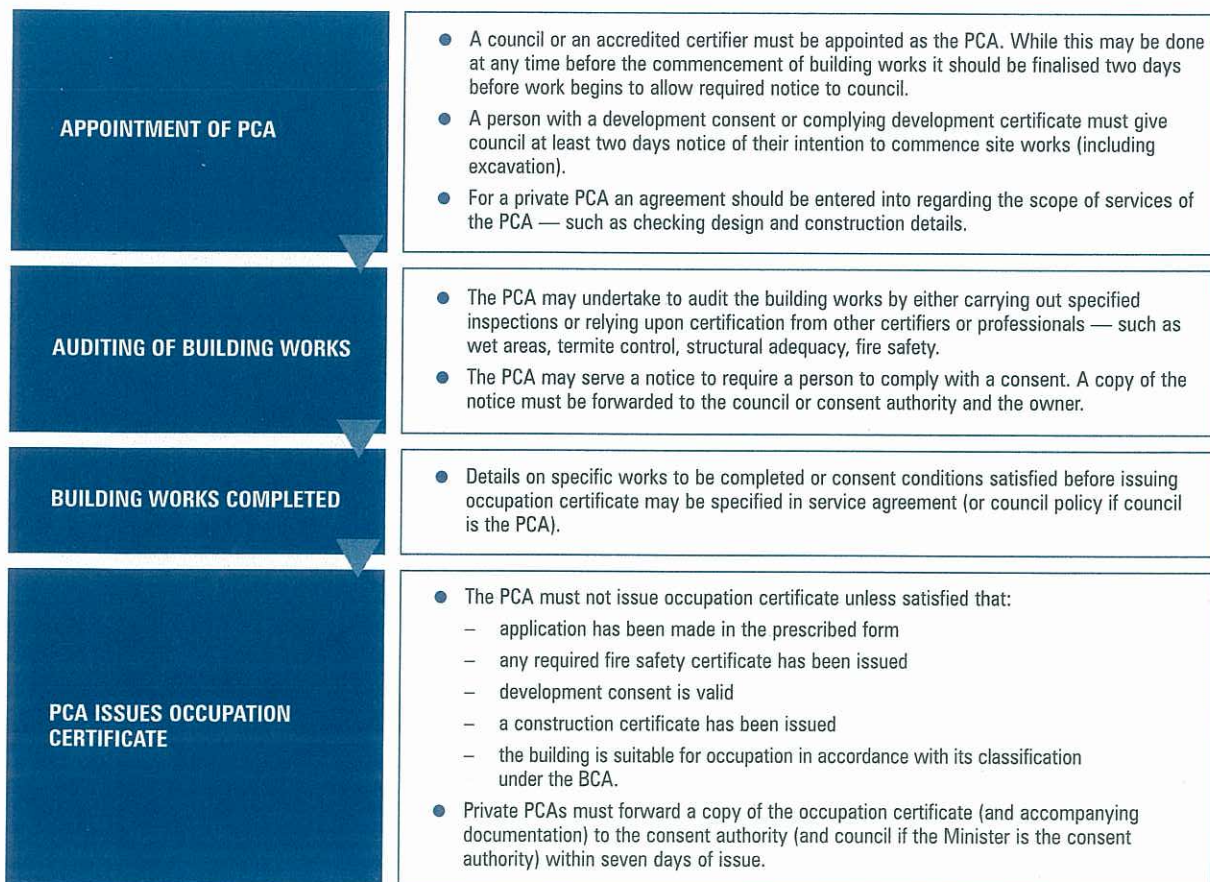
**What happens when the PCA and an accredited certifier disagree?**

If a PCA disagrees with a compliance certificate issued by a certifier (or the council), then the PCA has the option not to rely on the compliance certificate. By not relying on a compliance certificate, the PCA carries the liability for that aspect of the proposal. If a certificate is relied upon, section 109P of the Act enables consent authorities and accredited certifiers to rely on the certificate and avoid liability for any loss or damage arising from any matter for which the certificate has been issued.

Additional information is provided in the practice notes on the use of compliance certificates and responsibility and liability issues.

**A snapshot view of the construction stage**

The flowchart below summarises the key steps from the appointment of a PCA to the issue of an occupation certificate, with a focus on building work.



For further information please contact:

**Policy and Reform Branch**

Department of Urban Affairs and Planning

GPO Box 3927 Sydney NSW 2001

Phone 02 9391 2355

Fax 02 9391 2337

Email [reform@duap.nsw.gov.au](mailto:reform@duap.nsw.gov.au)

