

# CHOOSING

a certifying authority



NSW GOVERNMENT  
**Building Professionals Board**



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**Department of Planning**

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## a certifying authority

This pamphlet is to help owners and occupiers of land intending to build or to subdivide land to choose a certifying authority for that work.

### *What are 'certifying authorities'?*

Certifying authorities are responsible for the approval and inspection of building and subdivision works. They issue the certificates you need to build or to subdivide property eg. complying development certificates (planning and building approval for small developments in accordance with pre-set standards), construction certificates (for building approval), subdivision certificates (for the subdivision of land), strata certificates (for the subdivision of buildings) and occupation certificates (to permit the use of a building).

A certifying authority can be the local council, the Minister for Planning or an accredited certifier (private practitioners accredited to act as public officials).

Certifying authorities are experts on technical standards and regulations applicable to buildings or subdivisions. Certifiers do not, however, supervise builders.

Certifying authorities are important because they help to ensure that:

- detailed plans and specifications for proposed building and subdivision work comply with relevant building standards and the requirements of a council's development consent,
- important building elements e.g. fire safety systems, are installed in accordance with required standards, and

- the completed building or subdivision work is generally safe and healthy to occupy or use.

### *When do I need a certifying authority?*

Most building work requires either a development consent (council only); a construction certificate (council or an accredited certifier) before building works commence and an occupation certificate (council or an accredited certifier) prior to occupation or use of new building work.

Some building work only requires a complying development certificate (council or an accredited certifier) and an occupation certificate (council or an accredited certifier).

Minor building works may require no approval from council and are known as exempt development.

Subdivision work generally requires development consent (council only), a construction certificate (council or an accredited certifier) and a subdivision certificate (councils and, in limited circumstances, accredited certifiers).

Check with council about what type of an approval is required for the work you are doing. For the work certifying authorities carry out, see Figure 1 below. For information on approvals for building and subdivision

work, see 'Certifying building and subdivision work' (available at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)).

It is in your interests that your certifying authority is effective in ensuring the legal compliance of the building or subdivision work.



Figure 1: The approval process and who can certify

### What is an 'accredited certifier'?

An accredited certifier is a person who is accredited by the Building Professionals Board (the Board) under the *Building Professionals Act 2005* to issue certificates for building and subdivision work under the *Environmental Planning and Assessment Act 1979*. The nature and extent of work certifiers can undertake is dependent upon their level of accreditation.

Persons from a number of different backgrounds can become accredited certifiers, including building surveyors, engineers, land surveyors, planners, hydraulic services engineers etc. To be accredited these persons must demonstrate to the Board they have the qualifications, skills, knowledge and experience required and they have the required level of professional indemnity insurance.

### What is a principal certifying authority (PCA)?

In many cases you will need to engage a particular type of certifying authority known as a principal certifying authority (PCA).

The PCA inspects building and subdivision work during the course of construction to ensure it meets with regulatory requirements. The specific roles and responsibilities of the PCA are set down in the *Environmental Planning and Assessment Act 1979*.

Only a PCA can issue the occupation certificate and / or subdivision certificate at the end of the work.

In relation to building work, the PCA must assess whether the building complies with approvals and is suitable for occupation or use in accordance with its classification under the Building Code of Australia before

issuing an occupation certificate. In other words, the building generally complies with required building standards and is safe to occupy. The PCA can also issue subdivision certificates where council's local environmental plan (LEP) allows.

The PCA needs to be appointed **before** building or subdivision work starts.

From their appointment, the PCA is liable and has a duty of care in relation to any advice they give and action they take or omit to take at a construction site.

### Who can be a PCA?

Accredited certifiers and councils can undertake the functions of a PCA for a development.

Only the person with the benefit of the development consent (usually the owner of the land) can appoint a PCA. There are limited circumstances where accredited certifiers are able to issue subdivision certificates. If you choose to obtain a subdivision certificate from an accredited certifier, it is important to check whether council's LEP allows for accredited certifiers to issue these certificates.

If using a private sector PCA, the applicant must advise council of the PCA's name and accreditation number two days before work begins.

### Independence of accredited certifiers

When you engage an accredited certifier, you rely on them to act with integrity and impartiality. This gives you confidence that the completed works will meet with legal requirements and industry standards.

Accredited certifiers are defined as 'public officials' under Section 3 of the *Independent*

*Commission Against Corruption Act 1988* and as a 'public authority' under Section 5 of the *Ombudsman Act 1974*. This means that while they have contractual obligations to the person who appoints them, they also have overriding statutory duties to the general public to certify that development conforms to the necessary requirements. These statutory duties are set out in the *Environmental Planning and Assessment Act 1979*, the *Building Professionals Act 2005*, the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

If the requirements of council's development consent or certain procedural requirements set down in the *Environmental Planning and Assessment Act 1979* have not been met, the accredited certifier cannot issue the certificate(s) for which you have applied.

The certifying authority may issue notices to the property owner or developer under the *Environmental Planning and Assessment Act 1979* alerting them to the need to comply with the law and in particular, the requirements of development consent. Non-compliance may result in the local council issuing an order to comply and/or a fine on the owner or developer/ builder (ie. the person acting on the development consent). In the worst case this may require demolition of unauthorised work or expensive remedial work.

### Remember:

- Certifying authorities help you to ensure that building or subdivision work is lawful and safe.
- The certifying authority has a legal responsibility to ensure specified community standards are maintained.

## How to choose a certifying authority

Choose a certifying authority in the same way that you would choose your architect, draftsman or builder:

- Seek recommendations from people who have had building work or subdivision work done.
- Obtain quotes from the local council and a selection of accredited certifiers for the work.
- Check references provided by the different certifying authorities.
- Check what is included in any contract of service level agreement.
- Enter into a contract (preferably written) or a service level agreement with your selected certifying authority.

The Building Professionals Board website ([www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)) lists all accredited certifiers, including their accreditation number, contact details and category of accreditation. A certifier's category of accreditation dictates the type of certification work they can do.

The Board's website also provides details about previous disciplinary action taken by the Board against accredited certifiers.

Whilst accredited certifiers may refuse to act as a certifying authority for building or subdivision work, the local council does not have the authority to refuse an application for a construction certificate or appointment as a principal certifying authority.

Accredited certifiers cannot exercise the functions of a certifying authority ie.

undertake inspections and issue required certificates, unless they have professional indemnity insurance of at least \$1 million each year (exclusive of defence costs).

## How to appoint a certifying authority

The person with the benefit of the development consent must appoint the principal certifying authority (PCA). This is usually the owner of the land or someone authorised to act on their behalf.

The builder **cannot** appoint the certifying authority unless they are the person with the benefit of the development consent – this is important because the certifying authority checks aspects of the builder's work.

If you are appointing an accredited certifier as the PCA you must appoint an **individual** rather than any company for whom the individual works.

Remember that applying for a construction certificate is not the same as appointing a PCA. The certifying authority who issues the construction certificate does not have to be the PCA. The PCA must be specifically appointed (preferably in writing) to undertake inspections and issue the occupation certificate.

When you have appointed a PCA, you must notify the local council of the appointment at least two days before building or subdivision work commences.

### Remember:

- Only the person with the benefit of the consent can appoint the PCA.
- Appointment of a certifying authority is not the same as applying for a construction or occupation certificate.

### ***Changing a certifying authority***

If at any stage you wish to change the PCA for your development, notice must be given to the Building Professionals Board, accompanied by the signature of the current PCA, the signature of the incoming PCA and the signature of the person who appointed the current PCA.

Where the approval of any one of the above cannot be obtained, the formal approval of the Building Professionals Board is required to change the PCA.

### ***Contact details***

You can seek assistance from the Board in relation to accredited certifiers and the NSW certification system at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au) or phone (02) 9895 5950.