

Conditions of consent: advisory notes

In addition to the conditions of the development consent, the following advisory notes may be relevant for a person involved in carrying out the development approved under the consent and should be read in conjunction with the Notice of Determination.

The advisory notes do not form part of the development consent. However, they provide information on how the obligation to lawfully carry out the approved development can be met.

August 2023

General Advice – Consent

Complying with conditions of the Development Consent

Your development consent contains the conditions of consent that must be met to lawfully complete your development. If a condition requires further reports, payment of scheduled fees or an inspection, the condition is to be met at your expense unless otherwise specified in the condition.

Read all of the conditions of consent carefully before you start work and note which conditions must be met at each stage of the development. Liaise regularly with your builder and principal certifier to ensure all conditions are satisfied. If you have any questions regarding a condition, you can contact council's duty planner or an industry professional with relevant expertise for clarification.

Complying with the conditions of your consent will help avoid delays, or worse – a costly fine from council.

Application of prescribed conditions

In addition to the conditions of this consent, prescribed conditions may also apply. If prescribed conditions within Division 2 Part 4 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) related to your development and were in force at the time your application was lodged, these conditions must be met whether or not they were specified within this consent.

Bonds and Security Deposits

For some development, a bond or security deposit may be applied to ensure public infrastructure like roads and footpaths are not left damaged as a result of your development. Conditions for bonds and security deposits can vary so be sure that you understand the obligations to avoid forfeiting part or all of the amount paid.

Contact your local Council for more information about bonds and security deposits.

Contributions

If your development requires a contribution; for example works in kind or a monetary contribution towards shared public infrastructure such as parks or drainage infrastructure; the requirement will be conditioned within the development consent, and may be subject to consumer price index (CPI) increase.

Further information about local contributions can be found on the Department of Planning, and Environment's website.

<https://www.planning.nsw.gov.au/local-infrastructure-contributions-policy>

Long Service Levy

The New South Wales Parliament has imposed a levy on building and construction work costing \$250,000 and above (inclusive of GST). The levy is paid into a fund administered by the Long Service Corporation, and from this fund, the Corporation makes long service payments to building and construction workers.

The Levy is payable for building and construction projects costing \$250,000 and above (inclusive of GST) and is payable to Council, or directly to the Long Service Corporation. Evidence of payment of the levy is required to obtain a Construction Certificate.

The Long Service Corporation website has further information about the long service levy, including how to calculate your contribution on the approved development.

<https://www.longservice.nsw.gov.au/bci/levy>

Offences and Penalties

Only the approved development of this consent may be carried out on your land in accordance with the approved plans. Other development on the land to which the development consent does not apply must be carried out according to law.

A person carrying out unauthorised work may be charged with a criminal offence under the EP&A Act 1979 and if convicted, a monetary penalty may be applied.

Retirement of biodiversity credits

If your consent conditioned the requirement to retire biodiversity credits, this may be satisfied in one, or combination of, the following ways:

1. You can identify the required 'like for like' credits in the market through the Biodiversity Offset Scheme (BOS) public registers, then purchase the appropriate credits using the BOS transaction forms.
2. If you have a suitable site, you can develop a Biodiversity Stewardship Agreement (BSA) with the Credit Supply Taskforce (CST) to generate and retire biodiversity credits.
3. You can request a quote from the Biodiversity Conservation Trust to determine the cost of the credit obligation using the Biodiversity Conservation Fund (BCF) Charge System, and pay this amount into the BCF. The CST is then responsible for identifying and securing the credit obligation.

The variation rules for credit retirement may only be used to retire credits for which the proponent is unable to meet a like-for-like credit obligation, and only after demonstrating all reasonable steps have been taken as required by the ancillary rules (reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules) set out in section 6.5 of the Biodiversity Conservation Regulation 2017.

General Advice – Construction

Construction Certificate

A Construction Certificate may be required before building work approved under the development consent can lawfully start.

A Construction Certificate confirms your detailed plans comply with the Building Code of Australia and are consistent with the approved plans, documents and conditions of consent in accordance with EP&A Regulation.

Having a Construction Certificate means you can commence building work on the site in accordance with the approved plans. Private accredited certifiers and local councils can issue Construction Certificates.

Any works undertaken without a Construction Certificate will be unauthorised and you will not be able to obtain an Occupation Certificate for those works at the completion of building work.

Further advice about Construction Certificates is available on the Department of Planning and Environment's website.

<https://www.planning.nsw.gov.au/assess-and-regulate/development-assessment/your-guide-to-the-da-process>

Subdivision Works Certificate

Your development consent may require you to obtain a Subdivision Works Certificate before you can start works relating to subdivision. A Subdivision Works Certificate operates in the same manner as a construction certificate, but for subdivision works.

Private accredited certifiers and local councils can issue Subdivision Works Certificates. The issuing of a Subdivision Works Certificate does not negate the need for a Construction Certificate for other building works associated with the approved development.

Further information about Subdivision Works Certificates is available on the Department of Planning and Environment's website.

<https://www.planning.nsw.gov.au/policy-and-legislation/environmental-planning-and-assessment-act-1979/building-and-subdivision>

Appointing a Principal Certifier

A Principal Certifier (PC) (previously known as a principal certifying authority or PCA) is the only person/ body who can issue partial or final occupation certificates.

A PC must be appointed by the landowner before work commences. A builder cannot appoint the PC unless they are also the landowner.

A PC can be either an accredited private or Council certifier. The PC will inspect work during construction to ensure the works completed are consistent with the approved plans and comply with required building standards. However, it remains your responsibility to ensure all conditions of development consent are met.

If the appointed PC changes for any reason, all building works must stop until another PC has been appointed, and Council has been notified 2 days in advance in writing.

If the development consent allows for two different types of development that each require a separate PC, each PC is only engaged for one development type.

Further advice on finding and appointing a PC can be found on the NSW Fair Trading Website.

<https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-reno-vate/finding-and-appointing-a-certifier>

Utilities and authorities

It is your responsibility to find out if the land associated with the approved development is affected by utility assets above and below ground before you start approved work. Damage to these utilities can be avoided through a 'Dial Before You Dig' enquiry on 1100 or <https://www.1100.com.au/>

You may be required to liaise with relevant authorities and utility providers for some works depending on the circumstances of your development consent. This may include -

- Energy authorities, providers and operators
- Water authorities
- Telecommunications providers and operators
- Australia post
- Transportation authorities and operators
- Other state and Federal government departments

Please allow for the necessary approvals and charges imposed by the above authorities that may be associated with potential impacts of your development on infrastructure owned by a utility provider. For example, a utility authority may have specific safety requirements, or only allow authorised representatives to complete the work in the vicinity of underground infrastructure such as gas, water or power.

Fire safety

Ensuring your development is safe from risk of fire is important. Fire safety provisions are considered during the initial development application and further details are assessed before the issue of the construction certificate.

A Fire Safety Certificate may be required prior to obtaining an occupation certificate. If fire safety measures beyond those approved under the development consent are required prior to obtaining a Fire Safety Certificate under the EP&A Regulation, you must ensure these are met through a modification to the initial application.

Further information relating to building fire safe developments can be found on the Fire and Rescue NSW website.

<https://www.fire.nsw.gov.au/page.php?id=9140>

Further information about Fire Safety can also be found in the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

<https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2021-0689>

Contaminated land and materials

The potential for workers to be exposed to contaminants during construction works should be minimised through the development and implementation of a construction WH&S management plan including induction procedures.

Asbestos contamination is widespread in urban areas in NSW, and you should be aware of the dangers associated with handling asbestos material that may unknowingly be present on the site.

If asbestos is found during work, ensure the removal, transportation and disposal, regardless of quantity, is carried out in a safe and professional manner. Further information and regulation around handling asbestos can be found here

- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2017*
- Safe Work Australia Code of Practice - How to Manage and Control Asbestos in the Workplace
- Safe Work Australia Code of Practice - How to Safely Remove Asbestos
- *Protection of the Environment Operations Act 1997*; and
- *Protection of the Environment Operations (Waste) Regulation 2014*

If contamination is unexpectedly found during works, all work should cease and the consent authority and the Environmental Protection Authority (EPA) should be notified as soon as possible and consider if a Remediation Action Plan (RAP), or amendment to an approved RAP, is required.

If contamination occurs as result of works, the local council or the EPA have the authority to issue clean up notices, and in some cases fines, so please ensure the RAP or waste management plan are followed appropriately.

Virgin Excavated Natural Material – EPA advice, and applying for waste recovery exemption

Virgin Excavated Natural Material (VENM) is undisturbed, uncontaminated, and chemically stable soil. If your development required additional soil material, you may be required to provide evidence the soils is classed as VENM.

Information about soil classification can be found on the EPA website.

<https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste/virgin-excavated-natural-material>

In addition to the above, you may want to use alternative fill material to VENM. You can apply for an exemption under the waste recovery framework to use a select list of materials as a substitute for VENM.

Further information about waste recovery exemptions can be found on the EPA website.

<https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework>

Tree Preservation

Your development consent may require you to protect existing trees on or around the site from the impacts of the approved development. All trees should be protected unless otherwise noted within the consent, this includes trees located on adjoining land.

The development consent may allow for the protection of trees that are located on adjoining Council land. Please ensure you seek the permission of the landowner to access private lands if needed.

Please refer to local council policy for advice on appropriate measures for preserving trees not covered by this consent, including overhanging branches and underground roots that may be impacted by the approved development.

General Advice – Occupation

Occupation Certificate

An Occupation Certificate may be required before the development can be lawfully occupied or used as intended. This includes both habitable and non-habitable developments.

An Occupation Certificate confirms the development has been completed. Having an occupation certificate means you will be able to commence using the development for the occupation or as otherwise intended. You may not use the development as intended without an Occupation Certificate if one is required.

Further advice about Occupation Certificates is available on the Department of Planning and Environment's website.

<https://pp.planningportal.nsw.gov.au/post-consent-certificates/occupation-certificate>

Licenses to operate/ Change of use

You may decide to change the use of the completed development in the future. This may require a separate development application for the proposed change of use. Some changes of use may be approved as complying development. Some uses may also require additional inspections, licenses or approvals before the new use can start such as medical facilities, food and beverage providers or liquor and gambling outlets.

Useful contacts for further information

BASIX Information

1300 650 908 weekdays 2:00pm - 5:00pm or info@service.nsw.gov.au

<https://www.planningportal.nsw.gov.au/basix>

Department of Fair Trading

13 32 20

<https://www.fairtrading.nsw.gov.au/>

Dial Prior to You Dig

1100

<https://www.1100.com.au/>

Long Service Payments Corporation

131441

<https://www.longservice.nsw.gov.au/>

NSW Food Authority

Notification for your food-based business

1300 552 406

<https://www.foodauthority.nsw.gov.au/>

NSW Health

Information on asbestos and safe work practices.

<https://www.health.nsw.gov.au/environment/factsheets/Pages/asbestos-and-health-risks.aspx>

Water Efficiency Labelling and Standards (WELS)

<https://www.waterrating.gov.au/>

SafeWork NSW – Workplace Health and Safety Regulator

<https://www.safework.nsw.gov.au/>

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icare – Insurance and Care NSW

<https://www.icare.nsw.gov.au/>

SIRA – State Insurance Regulatory Authority

<https://www.sira.nsw.gov.au/>