

7.1 MAYORAL MINUTE - PRINCIPAL CERTIFYING AUTHORITY

MEETING DATE: 25 JUNE 2018

1. PURPOSE OF REPORT

To consider the following Mayoral Minute on Principal Certifying Authority.

2. MOTION

Under the current planning system in NSW, a person may appoint their local council or a private, accredited certifier as the Principal Certifying Authority (PCA) for the control of

- Complying Development, and / or
- development carried out under a Construction Certificate associated with a Development Consent.

Under the Environmental Planning and Assessment Regulation 2000, critical stage inspections must be undertaken by the PCA or, if the PCA agrees, by another certifying authority (which in practice and in the majority of instances is a private, accredited certifier).

In terms of the handling of complaints from the public that allege non-compliance with a Complying Development Certificate or Development Consent, it is the responsibility of the appointed PCA to investigate the complaint and also to initiate action to remedy the non-compliance. Any complaint by the public (or a council) about the unsatisfactory performance of the appointed PCA is processed by the Building Professionals Board (BPB). However, whilst the BPB can investigate and take disciplinary action against a certifier, the BPB cannot order building work to stop, unauthorised work to be rectified and cannot take action against builders, tradespeople or property owners.

Most Complying Development and / or Development Consent sites being developed in the City of Willoughby are under the control of an appointed private PCA.

It has been the experience of Willoughby City Council that in most instances where the public has reason to complain and allege non-compliances with Complying Development and / or Development Consents that these complaints are often in the first instance lodged with Council. When the complaints are referred by Council (or the public) to the appointed private PCA for processing, the complaints are rarely investigated comprehensively and actioned, and consequently, the complainant returns to Council for relief and satisfaction regarding their concerns.

Willoughby City Council currently prioritises the investigation and actioning of complaints about private PCA controlled development where there is the threat or risk to

- public safety
- pollution
- damage to the natural / built environment
- heritage items

In the most serious of matters where the performance of the appointed private PCA has provided cause for the lodgement of a complaint to the BPB, the level of investigation and burden of proof necessary to clearly demonstrate and prove negligence and / or misconduct to support and sustain the complaint is lengthy and onerous.

Willoughby City Council also understands that this situation is also experienced in other local government areas of NSW.

3. RECOMMENDATION

That Council:

- 1. Write to the Local Member and Premier Hon Gladys Berejiklian, Minister for Local Government and Planning Minister seeking a comprehensive urgent investigation and review of the Principal Certifying Authority system in NSW.**
- 2. Request that such an investigation and review must clearly identify existing problems and opportunities for reform so that Principal Certifying Authorities are compelled to investigate and action complaints about non-complying development. Where complaints are not investigated by the appointed Principal Certifying Authority, suitable, meaningful sanctions must be imposed as consequences. Moreover, the threat of sanctions must serve as an incentive for Principal Certifying Authorities to investigate and action complaints about non-complying development as well as provide for a meaningful consequence for poor performance and customer service.**
- 3. Submit a Motion to the 2018 Local Government NSW Annual Conference similarly seeking a comprehensive urgent investigation and review of the Principal Certifying Authority system in NSW.**

MOVED COUNCILLOR GILES-GIDNEY