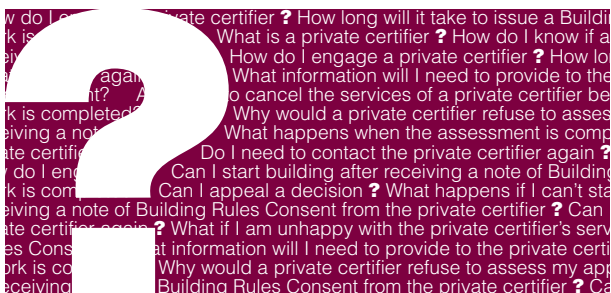


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# WHAT IS PRIVATE BUILDING CERTIFICATION?



## WHAT ARE MY RESPONSIBILITIES UNDER THE DEVELOPMENT ACT 1993



**Government of South Australia**

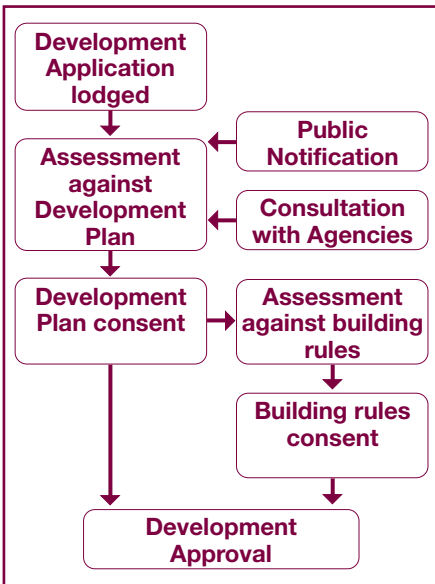
Department of Planning  
and Local Government

## The Development Approval process

All building work which is classed as ‘development’ requires a Development Approval under the *Development Act 1993*. A Development Approval usually consists of two or more consents: a Development Plan Consent and a Building Rules Consent, both of which must be obtained before a Development Approval will be issued.

The relevant authority that issues a Development Approval is usually the council for the area in which the development is proposed. For some classes of development, for example in out-of-council areas, the relevant authority is the Development Assessment Commission (DAC) which is an independent statutory body.

A Development Plan Consent is issued by the council or DAC, usually prior to the Building Rules Consent. A Building Rules Consent can be issued by the council, DAC or by a registered private certifier who has been engaged by the applicant.



## **What is a private certifier?**

*(Section 68A, Section 89, Regulation 89 and Regulation 92)*

A private certifier possesses building surveying qualifications and must be registered. They have the same power as a council in assessing applications for Building Rules Consent. The private certifier acts as the council in the public interest and has a professional responsibility to ensure that the application is complete and that it complies with the Building Rules, including the current version of the Building Code of Australia (BCA).

In instances where the certifier feels that the public interest would not be served by granting a Building Rules Consent, the application may be refused.

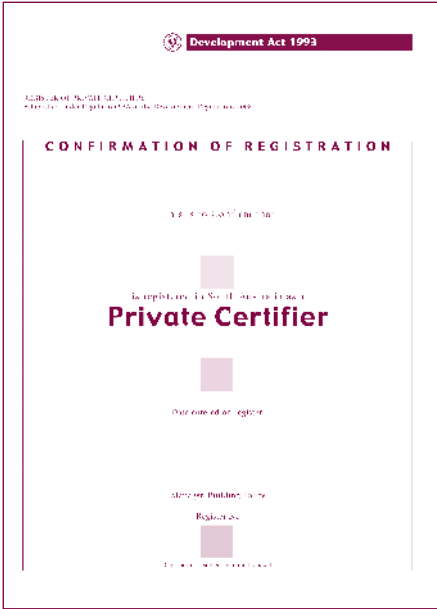
A private certifier is authorised to undertake the building rules assessment function and associated tasks as follows:

- assessing a development against the Building Rules, assigning a classification under the BCA and, if appropriate, granting a Building Rules Consent (but not a Development Approval);
- imposing any conditions under which the building work must be executed, if the certifier deems necessary;
- issuing a Schedule of Essential Safety Provisions; and
- processing Statements of Compliance and issuing a Certificate of Occupancy (if required) at completion of the building work.

When undertaking the assessment of an existing building, the private certifier also has the powers to require that the whole, or part, of the building be upgraded to comply with the BCA, if the private certifier is of the opinion that the building in its current form is unsafe, structurally unsound or in an unhealthy condition.

## How do I know if a private certifier is registered?

(Section 91, Regulations 91, 93 and 93A and Schedule 23)



In order to practise, a private certifier must be registered. Evidence of registration will be in the form of a Certificate of Registration that you should ask to see if it is not already displayed.

In order to register, the private certifier must meet the following three criteria:

- be an accredited building surveyor;
- have the required experience; and
- hold a policy for professional indemnity insurance as prescribed by the Regulations.

The Registration Authority is responsible for determining whether or not private certifiers comply with the above requirements. A list of registered private certifiers can be obtained from the Building Policy Branch, Department of Planning and Local Government or from the website [www.dplg.gov.au/go/building](http://www.dplg.gov.au/go/building).

## **How do I engage a private certifier?**

*(Section 93 & Regulation 90)*

If you decide to use the services offered by a private certifier you are required to 'engage' them under a written agreement. The agreement is usually in the form of a pro-forma and should outline the services to be provided including the fee that will be charged for the provision of the services. The fee charged will be by agreement between the two parties.

Upon being engaged to carry out the building rules assessment, the private certifier will notify the relevant council of their engagement.

If you are not the owner of land on which a class 1b or a class 2-10 development is proposed you must notify the owner of the land of your intention to engage a private certifier.

If you are not the owner of land on which a class 1a development is proposed you must obtain the written consent of the owner of the land to engage the private certifier.

## **What information will I need to provide to the private certifier?**

*(Section 39 & Regulation 15)*

It is a good idea to contact the private certifier in advance to determine the documents that will be required and how many copies. In addition to the construction documents for the proposed development, you will need copies of the following:

- any prior consents or approvals that have been obtained, such as the Development Plan Consent;
- if the builder has been engaged prior to the application for Building Rules Consent, evidence that the building indemnity insurance has been paid (residential developments only); and
- evidence that the Construction Industry Training Levy has been paid for proposed developments over \$15,000 in value.

It is your responsibility to provide the private certifier with copies of these documents.

This is necessary to ensure the private certifier has regard to these documents when making decisions in relation to the Building Rules Consent.

The assessment process can be accelerated if the documents submitted for assessment have been certified by an independent technical expert as defined in Regulation 85 of the Development Regulations.

This type of certification can be undertaken in relation to certain aspects of the building work for example, the structural calculations, energy efficiency, or fire services and equipment, and means that the process of checking has already been completed by an independent expert, not the person who was engaged to perform the design work. The private certifier must accept the certificate of the independent expert and does not need to recheck the calculations.

Similarly, the private certifier must accept any Certificate of Conformity produced by the Australian Building Codes Board in relation to specific building products, materials or construction techniques.

### **How long will it take to issue a Building Rules Consent?**

*(Section 41 and Regulation 41)*

This will depend on the completeness of the application, but a private certifier must complete the assessment of the application within the prescribed times of four weeks for a residential (Class 1) development and 12 weeks for other developments.

A private certifier will usually estimate a completion date at the time of engagement. Most applications can be determined relatively quickly, but this assumes that at the time of engagement, you have provided sufficient information to complete the assessment.

The private certifier will check that there is adequate information to assess the application for compliance with the BCA and will request any further information to complete the task.

## **Am I able to cancel the services of a private certifier before the assessment work is completed?**

*(Section 96)*

If you wish to cancel the engagement of a private certifier before the certifier has completed the work you asked them to do, you must obtain the written consent of the Minister responsible for the Development Act.

If a private certifier resigns, the application can be referred to the council (or DAC if in an out-of-council area). Alternatively, another private certifier may be engaged with the consent or direction of the Minister.

## **Why would a private certifier refuse to assess my application?**

*(Regulation 93B)*

There may be situations when a conflict of interest may result in a private certifier refusing to deal with an application. For instance, an individual or company that undertakes to produce construction documents on your behalf cannot also undertake the building rules assessment of those documents. In situations where such conflict occurs, a private certifier is duty bound to refuse to undertake the building rules assessment.

In addition, a person must not act:

- for a council in relation to a development if the person has acted as a private certifier in relation to the same development; or
- as a private certifier in relation to a development in the area of a council if they have acted for the council in relation to the same development; or if they have an agreement with the council to provide professional advice to the council on an ongoing basis.

Persons are considered to act for a council if they perform the following tasks:

- provide professional advice to the council for fee or reward; or
- represent the council for fee or reward.

## **Why would the private certifier refer my application elsewhere?**

*(Section 94 and 95)*

There are several circumstances where the private certifier may deem it necessary to consult with statutory bodies, other private certifiers or committees for advice in relation to specific matters arising during the assessment of the application. Development work of a complex nature may require referral to the fire service, or the Building Rules Assessment Commission to seek advice on an alternative performance solution to the BCA.

Referrals to other private certifiers or council are only undertaken with your consent and, in the case of private certifiers, with the consent of the Minister.

You should be aware that referrals generally require additional fees which must be paid by the applicant.

## **What happens when the assessment is complete?**

*(Regulation 92)*

When the private certifier has assessed your development as complying with the Building Rules, a Building Rules Consent can be issued and you will receive notification.

The documents will be stamped, dated and signed by the private certifier and forwarded to your council so that a Development Approval can be issued. Council will then send a copy of the approval and the approved documents to the applicant and/or owner of the land if they are not a party to the application.

The Building Rules Consent will detail any conditions that the private certifier may have imposed on the proposed building work and the building classification, which determines the purposes for which the building can be used and/or occupied.



In addition, the Building Rules Consent will note that a written Statement of Compliance is required at the completion of the building works and whether a Certificate of Occupancy is required. Certificates of Occupancy are not required for Class 1 (residential) buildings or minor alterations to existing buildings. The Essential Safety Provisions (if any) that apply to the development will be scheduled and must be maintained on an ongoing basis. Any queries regarding the conditions imposed on the building consent should be directed to the private certifier.

Upon receipt of the Building Rules Consent from the private certifier, council has five working days to issue the Development Approval, which will incorporate any conditions of consent that the private certifier or council have imposed.

### **Can I start building after receiving a note of Building Rules Consent from the private certifier?**

*(Sections 32 and 33)*

No. A development is only an approved development when the council (or DAC in out-of-council areas) has issued a notice of Development Approval. A notice of Development Approval indicates that all the required consents under the Development Act have been granted and that building work may commence.

### **Can I appeal a decision?**

*(Section 86)*

If a private certifier refuses to issue a Building Rules Consent or you are unhappy with the conditions that have been imposed by the private certifier, you can appeal the decision through the Environment, Resources and Development Court (ERD Court).

Appeals must be lodged with the court no later than two months following the refusal to issue a consent or the receipt of notification of the conditions imposed.

## **What happens if I can't start building straight away?**

*(Regulation 48)*

You have 12 months from the date the Development Approval was granted to substantially commence building work.

In addition, the development must be substantially completed within three years from the issuing of the approval, otherwise the approval is deemed to have lapsed.

You can make an application to the relevant authority that issued the Development Approval (council or DAC) for an extension of these periods. A private certifier cannot extend the time period of the Development Approval.

## **Will the private certifier inspect my building work?**

*(Section 19 and Regulation 74)*

Private certifiers are not required, under legislation, to carry out inspections of building work. Whether your building will be inspected is up to your council and the policies it has adopted. Most inspections are conducted randomly.

To ensure that the building is being constructed in accordance with the approved documents, it is recommended that you engage an independent qualified person to inspect the building work on your behalf. This is an additional service for which fees will need to be paid.

In addition, your builder is required to notify council at the commencement and completion of building work, as well as at any other stage that council has nominated as part of the Development Approval. If you are an owner builder it is your responsibility to notify council as requested.

*(Refer to the brochure titled, *As an owner builder, what are my responsibilities under the Development Act 1993* for other owner builder responsibilities.)*

If you have contracted a builder to complete the work on your behalf, you should provide a copy of the Development Approval and all approved documents to

the builder. It is a good idea to provide contact details for the private certifier who was responsible for issuing the Building Rules Consent, in case the consent needs to be varied to reflect construction details or materials different from those in the approved documents.

### **Do I need to contact the private certifier again?**

*(Regulation 83AB)*

Upon completion of the building work, a written Statement of Compliance (Schedule 19A) must be lodged with the private certifier who issued the Building Rules Consent. The statement must declare that the building work carried out is in accordance with the documents that were signed off by the private certifier and the approval issued by council.

The private certifier is then responsible for ensuring that a copy of the statement is forwarded to the council within five days of receipt.

### **What if I am unhappy with the private certifier's service?**

*(Section 97 and Regulation 103)*

Private certifiers must comply with the *Development Act 1993* and *Development Regulations 2008*.

All private certifiers registered in South Australia must abide by the standards of professional conduct set out in the Code of Practice for Private Certifiers.

If you feel that your private certifier has failed to comply with or acted in contravention of either the Act, Regulations or the Code of Practice then you may lodge a complaint with the Minister.

A complaint must:

- be in writing; and
- contain particulars of the allegations on which the complaint is based; and
- be verified by statutory declaration, which means that the statement of claim must be witnessed by a JP.

Copies of the Code of Practice are available from the Building Policy Branch on 8303 0602 or from the Department of Planning and Local Government website [www.dplg.gov.au/go/building](http://www.dplg.gov.au/go/building).

## **For further information:**

For further information about Development Plan Consent or the Development Approval, contact your council.

For further information about the *Development Act 1993* or the *Development Regulations 2008*, contact your local council or the Department of Planning and Local Government, telephone 8303 0602.

Information about the Construction Industry Training Levy can be obtained from the Construction Industry Training Board, telephone 8172 9500.

Queries regarding appeals should be directed to the Environment, Resources and Development Court, telephone 8204 0300.

Copies of the *Development Act 1993* and the *Development Regulations 2008* can be purchased by contacting Service SA on 13 23 24 or viewed at the Government website [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au)

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## **Published by**

Building Policy Branch  
Department of Planning and Local Government  
GPO Box 1815  
ADELAIDE SA 5001

Phone (08) 8303 0602  
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Website [www.dplg.gov.au/go/building](http://www.dplg.gov.au/go/building)  
Date April 2010