

Murrant v Building Professionals Board

Mr Murrant was found guilty of unsatisfactory professional conduct, reprimanded and fined \$10,000 by the Building Professionals Board (BPB). This was upheld by the New South Wales Civil and Administrative Tribunal (NCAT).

Lessons Identified from this Case

- Certifiers have a duty to take all reasonable steps to obtain relevant facts and ensure compliance with legislation before issuing a CC. Relying on the applicant's word that developer contributions are paid is not sufficient.
- Certifiers are ultimately responsible for satisfying their legislative obligations and cannot contract out responsibility to developers or administrative staff.

Setting the Scene: Relevant Legislative Provisions

Building Professionals Act 2005 (Repealed)

Current equivalent: *Building and Development Certifiers Act 2018* (citation in brackets).

- Section 66(1)(c) (now ss 28(1) and 29 (1)) contains conflict of interest provisions that, among other things, prevent a certifier from issuing a certificate if they are the applicant for the certificate.
- Section 85(1)(b) (now s 44(1)) prohibits a person from making any statement that is false or misleading when issuing a certificate.

Environmental Planning and Assessment Act 1976

Amended since decision. Updated citation in brackets.

- Section 94 (now s 7.11) requires a certifier to grant development consent if, and only if, there has been a dedication of land free of cost, a monetary contribution has been paid, or both. This goes towards the provision or improvement of amenities or services within the area of the development.
- Section 109F(1)(a) (now s 6.8) requires that a CC not be issued unless all requirements of the *EP&A Regulation* have been complied with.
- Section 109E (now s 6.5) describes one of the functions of being a certifier as issuing CC for building work when authorised to do so.

Environmental Planning and Assessment Regulation 2000

- Clause 139(1A) states that only a person who may appoint a principal certifier for a development may apply for a CC.
- Clause 146 lists the conditions under which a development consent must be complied with before a CC may be issued.

Case Details

Mr Murrant approved and issued a CC for a multi-dwelling housing development in 2018.

At the time of CC issue, the developer had not yet paid the ~\$700,000 of contributions imposed under s 94 of the EPA Act. A condition of the development consent required the certifying authority to sight Council's 'Contribution Sheet', signed by a council officer and confirming payment, before a CC was issued. Mr Murrant did not obtain this evidence before issuing the CC and instead relied on the words of others.

In addition, Mr Murrant was the applicant and the certifying authority for the development. This was both a conflict of interest under s 66(1)(c) *BP Act*, and a breach of cl 139(1A) of the *EP&A Regulation* which only allowed the person with benefit of the consent to apply for a CC. He was also the applicant for his appointment as principal certifying authority, in breach of ss 109E(1) and (1A) of the *EP&A Act*.

Mr Murrant was fined \$10,000 by the BPB.

Whilst Mr Murrant claimed that these errors were purely administrative and that, where he could, he took steps to rectify these contraventions, he did not oppose the BPB's findings. His appeal to NCAT was made on the basis that the fine was excessive.

Conclusion

NCAT agreed with the BPB's findings of unsatisfactory professional conduct. NCAT held that Mr Murrant displayed a fundamental lack of regard for the legislative requirements in avoiding conflicts of interests and maintaining the integrity of the accreditation and certification system, as well as a lack of regard in ensuring that all legislative requirements are complied with before a CC is issued and construction work commences.

The BPB's decision to reprimand Mr Murrant and fine him \$10,000 was upheld.

More Information

[EP&A Act](#)

[EP&A Regulation](#)

[Building and Development Certifiers Act 2018](#)

[Building and Development Certifiers Regulation 2020](#)

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