

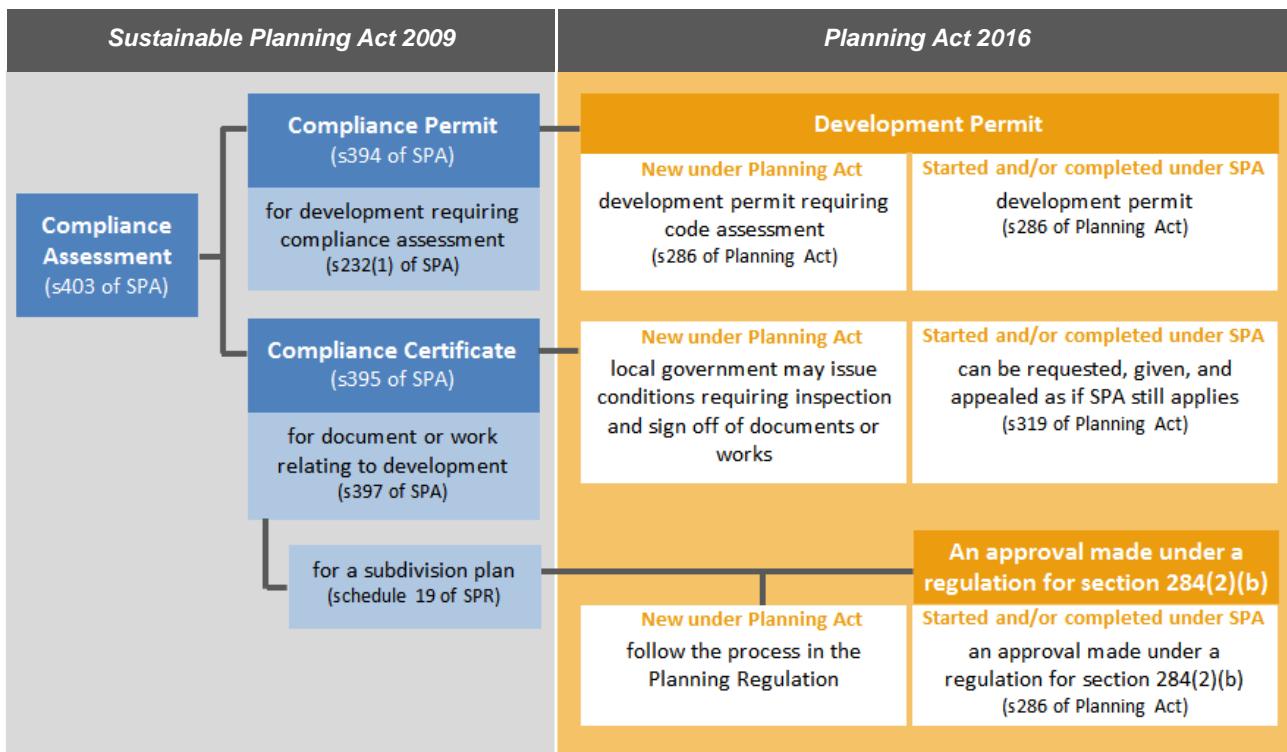


Fact sheet: Changes to compliance assessment under the *Planning Act 2016*

This fact sheet outlines how compliance assessment, introduced under the Sustainable Planning Act 2009 (SPA), has transitioned to the Planning Act 2016.

Unlike code assessment or impact assessment, compliance assessment was used to assess not only proposed development but matters in relation to development, such as documents or works. The application of the compliance stage meant that certain developments, documents or works required compliance approval against certain identified criteria.¹

Under SPA, two instrument types resulted from compliance assessment – a compliance permit and a compliance certificate. The following diagram shows how compliance assessment now operates under the Planning Act compared with the previous system.



¹ The information contained within this fact sheet covers compliance assessment as dealt with under the Sustainable Planning Act and the Planning Act. Information regarding compliance in regard to the term enforcement has not been covered.



Under SPA, a compliance permit authorised a development. In the new system, it is taken to be a development permit under section 286 of the Planning Act.

There is no equivalent instrument under the Planning Act for a compliance certificate that certifies documents or works in relation to, or resulting from development, rather than the development itself. Some local governments made use of the compliance certificate arrangements under their planning schemes or development approvals.

Consequently, transitional provisions of the Planning Act preserve the effect of the SPA in relation to compliance assessment processes underway for these certificates, or certificates already issued, at the time the Planning Act commenced (3 July 2017).

The table below outlines how compliance assessment (including compliance permits and compliance certificates) is dealt with under the Planning Act and options for how local governments may use similar processes in the new system.

<i>Sustainable Planning Act 2009</i>	<i>Planning Act 2016</i>
<p>Compliance assessment</p> <p>Compliance assessment was the assessment of a development, document or work relating to development that was assessed for compliance with:</p> <ul style="list-style-type: none"> • a matter or thing prescribed under a regulation • a state planning regulatory provision • a planning instrument • a master plan • a preliminary approval to which section 242 applies • a condition of a development approval or compliance permit. <p>Instruments resulting from compliance assessment were a compliance permit and a compliance certificate.</p>	<p>Code assessment (compliance permit only)</p> <p>Development subject to compliance assessment requiring a compliance – permit transition to code-assessable development under the Planning Act.</p> <p>Compliance certificates have not been carried over to the Planning Act.</p>
<p>Compliance permit</p> <p>SPA (section 394) defined a compliance permit as authorising development to the extent stated in the permit and subject to the conditions stated in the permit. If a request for compliance assessment of development was approved, the compliance assessor had to issue a compliance permit. A compliance permit could only be given in respect of development.</p>	<p>Development permit</p> <p>In planning schemes or temporary local planning instruments where certain development is subject to compliance assessment requiring a compliance permit, this development transitions to code-assessable development under the Planning Act (section 289).</p> <p>This change, justified as code assessment under the Planning Act, is much more closely aligned to compliance assessment than to code assessment under SPA. Consequently, there was little benefit in retaining compliance assessment when the same outcome could be achieved by a development permit decided within bounded code assessment.</p>

Sustainable Planning Act 2009	Planning Act 2016
<p>Compliance permit (continued)</p> <p>SPA (section 346) enabled a development condition to state that a compliance permit was required for subsequent development; however, the planning scheme or a temporary local planning instrument had to identify that the development was subject to compliance assessment and the development approval itself could not assign the category of development if the planning scheme had not already done so.</p>	<p>Development permit (continued)</p> <p>Local governments that use compliance permits and wish to use a similar process under the Planning Act are encouraged to issue development permits using code assessment. In some cases where conceptual approval is required followed by more detailed development at a later stage, a preliminary approval followed by a development approval may be more appropriate.</p> <p>Existing compliance permit issued under SPA – transitional provisions</p> <p>The Planning Act (section 286) provides that a compliance permit issued under SPA effectively becomes a development permit under the Planning Act, even though the terms or conditions could not be imposed under the Planning Act.</p> <p>However, the compliance permit is taken to have been made, given or received when it was made, given or received under SPA. Compliance permits that have been issued are still current and given effect under the Planning Act but are treated as development permits from the start of the Planning Act. Under section 299 of the Planning Act, section 409(2) of SPA applies and therefore the 'relevant period' under SPA for a compliance permit is taken to be the currency period for the Planning Act.</p>
<p>Compliance certificate</p> <p>SPA (section 395) defined a compliance certificate as approving the document or work to the extent stated in the certificate, and subject to the conditions stated in the certificate. If a request for compliance assessment of a document or work was approved, the compliance assessor had to give a compliance certificate. A compliance certificate could only be given in respect of documents and works.</p> <p>SPA (section 346) enabled a development condition to state that a compliance certificate was required for further documents and works.</p>	<p>N/A</p> <p>Compliance certificates, or an equivalent assessment for documents and works, have not been carried over into the Planning Act, meaning that applications for compliance certificates could no longer be made once SPA was repealed.</p> <p>Local governments that used compliance certificates under SPA, even where there was no head of power within the Planning Act, may still impose conditions on development permits requiring particular documents or works to be approved or inspected by a nominated or suitably qualified person (e.g. when the works are completed, the Council Engineer will come to inspect the works and provide a certificate of compliance). This process can be used and set up at the discretion of the local government. In imposing any such condition, local governments should ensure that, as for any other condition, the condition is reasonably capable of meeting the 'relevant or reasonable' test. In particular, care should be taken to ensure the condition provides for reasonable certainty and finality about the development that has been approved.</p>

Sustainable Planning Act 2009	Planning Act 2016
Compliance certificate (continued)	N/A (continued) <p>Existing compliance certificates issued under SPA – transitional provision</p> <p>Under the Planning Act (section 319), if approval was previously given under SPA with a condition requiring a compliance certificate, a compliance certificate can be requested, given, and appealed as if SPA still applied, even after commencement of the Planning Act.</p> <p>After commencement of the Planning Act any document or work requiring a compliance certificate under the planning scheme or development approval will also be dealt with as if SPA had not been repealed. SPA will also continue to apply to certificates previously issued, for example to facilitate changes to a previously issued certificate.</p>
A compliance certificate for a subdivision plan given under the repealed Sustainable Planning Regulation 2009 (SPR), schedule 19 <p>A compliance certificate is also issued following the process for checking compliance with all the conditions imposed on a reconfiguration of a lot prior to approval (or sealing) of the subdivision plan. The process for this is prescribed and given under schedule 19 of the SPR.</p>	An approval made under a regulation for section 284(2)(b) <p>A process has been provided for how local governments must approve plans for reconfiguring a lot. This process, which is included in a schedule within the Planning Regulation 2017, is similar to the existing process set up under SPA.</p> <p>Existing compliance certificates (for subdivision) issued under the SPA – transitional provisions</p> <p>After commencement of the Planning Act compliance certificates related to subdivision plans will be considered an approval made under the process prescribed in the Planning Regulation (section 286 of Planning Act).</p>

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