

Compliance Levy FAQs

The NSW Government has completed a review of compliance levies charged by councils to create a more certain, consistent and transparent system. The review will lead to a new framework that removes unnecessary levies on development applications and provides councils with the resources needed to ensure builders are following the rules, while minimising the impact on those who seek to follow the rules.

What is a compliance levy?

Compliance levies are a fee charged by some councils on development applications (DAs) and complying development certificates (CDCs) under the *Local Government Act 1993*. The rates vary significantly from a small flat fee to a sliding scale based on the cost of development.

Regulation changes enacted on 16 July 2021 mean councils are no longer able to charge compliance levies for DAs. A new compliance levy will be introduced for CDCs under the *Environmental Planning and Assessment Act 1979*. This will support councils as they monitor compliance over more complex and varied types of complying development.

Why introduce a levy on complying development?

Complying development is an increasingly complex area with an expanding list of types of development that must be policed. This has increased the burden on councils to adequately monitor and enforce compliance. A compliance levy on CDCs recognises the extra resources councils need, particularly in situations where they have not been involved in the assessment and do not receive any of the assessment fee.

What is the department doing?

The department is developing a new levy structure for CDCs that will set a transparent levy framework across the State.

After targeted consultation with the local government sector, the new compliance levy framework is being implemented through a staged approach:

From 16 July 2021,

- Regulation changes made to prohibit compliance levies on DAs for all councils.
- The changes include a transition period to allow councils that already charge compliance levies on DAs to continue doing so until 31 December 2021.
- No new councils can charge compliance levies.

From 1 September 2021

- The new compliance cost notice provisions come into effect for all councils.
- A new compliance levy on CDCs will come into effect for all councils.

From 1 January 2022

- Councils can no longer charge compliance levies on DAs.

Consultation with councils and the development industry continues to form an important part of the review process.

I paid my compliance levy when I lodged my DA, but my DA won't be approved until after the levies are suspended, will I get a refund?

The 29 councils that currently charge compliance levies may continue to do so until 31 December 2021. Councils are allowed to make decisions relating to their own fees and charges until that time.

How much will the new compliance levy on CDCs be?

The levy is set at a rate that ensures complying development remains a cheaper and simpler approval pathway for low-risk, low-impact development. While councils are not the consent authority for complying development, they continue to have a compliance role for all local development. The Department is finalising the proposed levy structure following consultation. More details will be provided in due course.

Will councils be able to charge their own levies in addition to the state levy?

No. From 16 July 2021, councils are no longer able to charge compliance fees under the *Local Government Act 1993*, unless they were one of the 29 councils doing so before the change took effect, in which case, they can continue to charge the levy until 31 December 2021.

In relation to the proposed levy for CDCs, a consistent levy for complying development will be introduced to apply State-wide. Councils will not be able to charge their own levy in addition to this.

Compliance Cost Notices FAQs

What is a compliance cost notice?

A compliance cost notice allows an authority, usually councils, to recover the reasonable cost of monitoring and ensuring compliance.

Why review compliance cost notices?

The department has received feedback that the compliance cost notice provisions are hard to administer and may not sufficiently recover the costs of an investigation and preparing an order.

Compliance cost notices are capped at:

- \$500 for the preparation of a notice of intent to give an order, and
- \$1,000 for the issuing of an order.

We understand that these caps do not cover the cost of a complex compliance investigation. A council must record all details of tasks completed, the salary rate of officer completing the task, and time taken to issue compliance cost notices. This adds an administrative burden to councils, where compliance officers are managing many investigations at once. Further, it can create equity issues where people issued with a notice have no control over which compliance officer investigates the matter, which influences the cost.

What does the compliance cost notice review consider?

During consultation, councils and industry raised some issues for us to work through:

- What is the greatest amount to recover through compliance cost notices?

- What items could be funded through a compliance cost notice?
- How can the systems be simplified to ensure we can continue to issue compliance cost notices while limiting appeal risks.

We are currently considering all feedback from councils and industry. We will provide further information on any proposed changes in due course.

What is the benefit of a compliance cost notice?

Compliance cost notices ensure that those who are breaking the rules are contributing the cost to compliance. This minimises the cost impact on builders and developers who are doing the right thing.

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