

LG Alert

Commencement of Private Certification of Development Plan Consent

Following our previous LG Alerts regarding the changes to private certification in South Australia, we can confirm that, **as from today**, private certification of Development Plan consent in respect of development applications to which the residential code applies **has commenced**.

This has occurred through:

- the *Development (Private Certification) Amendment Regulations 2013* ("Variation Regulations") being Gazetted. These Variation Regulations have been changed from the draft Regulations which were distributed for comment in late 2012. These changes are set out below; and
- a proclamation being made to implement the Variation Regulations and the *Development (Private Certification) Amendment Act 2012* ("Amendment Act") with **immediate operation**.

As from today, private certification of Development Plan consent has commenced.

Previous LG Alerts have addressed the ways in which the Amendment Act will amend the *Development Act* (see [LG Alert - Development \(Private Certification\) Amendment Bill](#)) and analysed the ways in which the draft Variation Regulations would amend the *Development Regulations* (see [LG Alert - Private Certification Update](#), [LG Alert - Development \(Private Certification\) Amendment Act](#)).

The key changes that have been made to the Variation Regulations from the draft Variation Regulations released last year include:

- the required qualifications have been **expanded** to include not only current private certifiers of Building Rules consent, but also:
 - persons who hold corporate membership of the Urban and Regional Planning Chapter of PIA; and
 - such qualifications or experience in urban and regional planning, environmental management or a related

discipline as the Minister considers appropriate;

- to require the Council, within 2 business days, to provide advice to a private certifier regarding possible site contamination or the likely need for a section 221 certificate, *if requested* by the private certifier (Regulation 15);

The required qualifications have been expanded to include persons who hold corporate membership of the Urban and Regional Planning Chapter of PIA.

- to clarify that a private certifier's ability to determine whether a variation from the requirements of the Residential Code is a minor variation is limited to the granting of a Development Plan consent (Regulation 89);
- to require that a private certifier undertakes certain notifications to and provides the Council with certain documents (Regulations 92 and 102);
- to increase the Council's obligations to maintain a register of applications lodged with a private certifier (Regulation 98);
- a requirement that the Council publish its register of applications under Regulation 98 on the internet from 1 January 2014;
- a requirement that the Council retain and preserve for at least 10 years all documents provided to it by a private certifier in relation to an application for Development Plan consent; and

All members of the public are permitted to inspect all documents retained by the Council pursuant to Regulation 101 without charge.

- permitting **all** members of the public to inspect **all** documents retained by a Council pursuant to Regulation 101 without charge, or to obtain a copy upon payment of a fee, unless doing so would unreasonably jeopardise the security of a building, involve an infringement of copyright, or constitute a breach of any other law.

A copy of the Variation Regulations, as well as a new residential code development application form, can be located in today's [Government Gazette 11 April 2013](#).

If you have any questions please contact Joanna Osborne or Victoria Shute on 8113 7106, 8113 7104 or j Osborne@kellyjones.com.au, vshute@kellyjones.com.au