

Private Certification Update

Our previous LG Alert addressed the introduction of the Development (Private Certification) Amendment Bill ("the Bill") into Parliament last month. That Bill has now passed the House of Assembly, and is likely to pass through the Legislative Council as early as next week. The Government's stated intention is to have the Bill pass into law before the end of the year and for private certification of Development Plan consent to commence early in the New Year.

Furthermore, this week, the Government released a draft of the Development (Private Certification) Amendment Regulations ("the Draft Regulations") which will amend the Development Regulations 2008 ("the Regulations") concurrently with the Bill amending the Development Act 1993 ("the Act"). The Draft Regulations provide detail and structure as to how private certification of Development Plan consent will operate.

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Importantly, the Draft Regulations confirm the following:

- private certifiers will be limited, by a new regulation 89(1)(aa), to assessing Residential Code development only. However, this role could be expanded beyond Residential Code developments at a later time by further changes to the regulations;
- a new regulation 89(1)(ab) will give private certifiers the authority to determine that a development application proposes only a minor variation to the Residential Code for the purposes of section 35(1b) of the Act and to grant Development Plan consent to the application;
- private certifiers will not be required to obtain any specified new qualifications, or undertake any training before they are able to issue Development Plan consent. Rather, amendments to regulation 91 will prescribe the requisite qualifications to be either those currently required to assess Building Rules consent, or other qualifications and experience approved by the Minister;
- no new measures are proposed to allow Councils to refuse to issue development approvals where there is an error in a privately-certified Development Plan consent. Rather, as long as the supporting plans and documents are consistent for the purposes of regulation 46(1), development approval must be issued. In this situation, the Council will be limited to taking one or more of the following action(s):
 - put the owner of the development authorisation on notice of the error and/or;
 - lodge a complaint against the private certifier with the Minister (via a new regulation

103(2)(aa)) or the Development Assessment auditor (in the hope that this issue will be addressed in, or trigger, an audit in the future).

- Development Assessment audits will, under a new regulation 103AB, be conducted by DPTI and be limited to Residential Code development only. All Councils and private certifiers will be audited once every three years, and the first audit must be completed before 30 June 2016.

The Draft Regulations will also amend regulation 15 of the Regulations to create a new process which both Councils and private certifiers must follow when an applicant engages a private certifier to assess Development Plan consent. Under this process:

- the private certifier must, within two business days of being engaged, provide the Council with a copy of the development application and pay to it the base lodgment fee; and
- the Council must, within two business days of receipt of the application and fee provide to the private certifier:
 - the development assessment number assigned to the development proposed under the application; and
 - (if relevant) provide advice to the private certifier about the likely need for the applicant to obtain a permit under section 221 of the Local Government Act 1999; and
 - (if relevant) provide advice to the private certifier about any site contamination believed to exist at the site. While the Draft Regulations are not clear as to how much detail the Council must provide, we would anticipate that it would be limited to any information on Councils files which suggests that site contamination may be present as a result of a previous use of the land, or a previous activity on the land (i.e. the information required pursuant to Schedule 4 clause 2B(4) of the Regulations).

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We will keep you updated on the progress of the Bill in the coming weeks.

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