

Council planners warn of a legal nightmare

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By Harvey Grennan

COUNCILS will have to give binding advice to private certifiers on whether an application for a construction certificate or an occupation certificate complies with the development consent.

In effect, councils will be forced by the planned implementation of Section 109PA of the Environmental Planning and Assessment Act to do private certifiers' jobs for them if asked.

If a council does not deal with an application for advice within 21 days, the building will be deemed to comply with the development consent.

Council planners say the legislation confirms that private certifiers do not have the skills and competence to do the job and that it will expose councils to a "legal nightmare" of potential costs and damages.

A meeting convened yesterday by the Building Professionals Board (BPB) discussed the form of regulations which will dictate how the new provision will be implemented and what fees councils may charge.

Section 109PA says: "Before issuing a construction certificate for building or subdivision work, a private certifier may apply to the local council for advice as to whether the design and construction is consistent with the relevant development consent.

"Similarly, advice can be sought before issuing a final occupation certificate for a building or part of a building whether it is consistent with the development consent or complying development certificate.

"If the council does not deal with an application within 21 days it taken to have given advice that the building, part of the building or work is consistent with the approval."

The new provision will cause tensions about what councils will be permitted to charge for advice. Major projects such as apartment blocks may require days or weeks to assess and councils will want to recover the full cost of staff's time.

The State Government, however, is likely to place a cap on fees a council may charge. Some councils have indicated they may take the easy way out and adopt an unwritten policy of finding all applications for advice inconsistent with the development consent.

Meanwhile the BPB has quietly relaxed the procedures for accrediting private certifiers less than 12 months after the Government announced it was toughening the rules and penalties covering certifiers.

Existing certifiers will be given up to February 2011 to be assessed by the BPB and they will only need to complete a short course at the University of Technology to be accredited. They will not have to demonstrate that they satisfy the qualifications, performance criteria and experience requirements of the Building Professionals' Accreditation Scheme.

Certifiers will be able to continue carrying out critical stage inspections, such as concrete pours, beyond their level of accreditation. This exemption was to end on March 1.

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