

*Report by Jason Wong, Development Assessment Coordinator*

**RECOMMENDATION**

***That Council notes the following information report in relation to proposed amendments to the Environmental Planning and Assessment Act 1979 (NSW).***

**PURPOSE OF REPORT**

This initial information report is provided in response to the Notice of Motion made by Councillor Lim at Councils' meeting held on 7 April 2009 (Minute No. 144/09):

**Private Certifiers – Binding Advice from Council**

*“To authorise the General Manager to prepare a report on the planned implementation of Section 109PA of the Environmental Planning and Assessment Act 1979 (NSW), including, but not limited to, the impact on the Strathfield local government area.”*

Pending the commencement or otherwise of this provision, further advice will be presented to Council.

**REPORT**

In June 2008 the NSW Parliament approved various amendments to planning laws in NSW.

The amendments include the proposed introduction of section 109PA into the NSW Environmental Planning and Assessment Act 1979.

Section 109PA provides that a private certifier may, before issuing a construction certificate, ask a consent authority for advice as to whether the design and construction of any building or work to which the certificate relates is consistent with the relevant development consent. If the consent authority does not reply within 21 days it is deemed to have advised the private certifier that the building or work is consistent with the relevant development consent.

The proposed amendment also provides that any construction certificate or occupation certificate issued in reliance on that advice may not be challenged, reviewed, quashed or called into question before any court of law at the request of the consent authority.

The proposed amendment appears to be inconsistent with the intent of private certification, which is to empower accredited private certifiers to act in the role of Council and to be responsible and accountable for the certification process. The amendment would also indicate that the State Government acknowledges private certifiers may lack the appropriate skills and competence to carry out certification work.

There are resourcing implications for Council as it would be required to issue advice within 21 days of receiving a request. Council officers would need to carry out a detailed assessment and inspection of construction works to ensure there are no departures from the approved plans (e.g., additional or deleted internal walls, changing unit numbers and format, adequacy of parking etc).

Major projects such as apartment blocks may require days or weeks to assess and Council would want to recover the full cost of Council staff's time.

Furthermore, the State Government has not indicated how the new provision will be implemented and what fees Councils may charge. It is also uncertain whether the State Government will place a cap on the fees that Councils may charge.

The amendment may also increase Council's exposure to costs and damages claims. In this regard, the amendment shifts the onus and responsibility for the certification process back to Council, even though an applicant may have appointed a private certifier in the first instance.

Consultation with other Councils has indicated they may adopt an internal policy of finding all applications for advice inconsistent with the development consent in order to limit their exposure to costs and damages claims. Such a policy however, may neither be appropriate or practical.

#### REFERRALS FROM OTHER DEPARTMENTS

No referrals were required.

#### FINANCIAL IMPLICATIONS

The potential financial implications for Council are detailed in the report.

#### Report approved by:

Silvio Falato	David Hazeldine
<b>Manager Development Assessment</b>	<b>Acting/Director Technical Services</b>