



ADVISORY NOTICE

BUILDING

27/04

Advisory Notices are issued to assist in the interpretation of the Development Act 1993

December 2004

PROFESSIONAL PRACTICE:

Complying development

Section 97 (1)(b) of the *Development Act 1993* requires a private certifier to 'ensure that any development authorisation given by the private certifier is consistent with any other development authorisation that has already been given in respect of the same proposal.'

The administration of this provision is given in more detail in Development Regulation 89 (2)(a) which stipulates that a 'private certifier must not grant a provisional building rules consent in respect of a development which requires provisional development plan consent, **other than a development classified as a complying development under these regulations or the Development Plan**, before that provisional development plan consent is granted'.

Note: Complying development under the regulations is specified in Schedule 4, Part 1 and conditionally includes items such as the total demolition and removal of a building; the construction of fences; the construction of water tanks; the construction of fixed and moveable swimming pools; certain work in out-of-council areas; special cemetery buildings and railway activities. Care needs to be taken that these forms of development are not in any of the exclusion areas (such as the Hills Face Zone, Historic Conservation Zone, City of Adelaide, State heritage place etc.) where they are not regarded as complying development.

That is, if the development is complying development, either under the Regulations or in a Development Plan, then a private certifier is able to issue the provisional building rules consent **before** provisional development plan consent is granted.

There will, of course, be instances where a determination of whether a proposal is complying development or not can only be made once the council planners have had an opportunity to consider the application.

For significant trees, any tree damaging activity is defined as being development and such work is not regarded as being complying development under Schedule 4. So, even if work would normally be regarded as complying under Schedule 4, if there is the potential for damage to a significant tree then the total of the proposed work can not be assessed as complying.

If an application has already been made to the council for provisional development plan consent, then it would be reasonable to contact the council's planning officers and confirm the status of the work as being complying development.

Where an application for provisional development plan consent has yet to be lodged with council, and the certifier has sufficient confidence that the work is complying development, then they can proceed to issue the provisional building rules consent. If the certifier does not have this confidence then it would be reasonable to again contact the council's planning officers to seek confirmation of the status of the

work as being complying.

If it is subsequently determined that the work is in fact not complying development, either under the Regulations or in the Development Plan, then the provisional building rules consent will need to be reissued with a new date and with any changes that are required to make it consistent with the provisional development plan consent.

Further information

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