

Our ref:



Council reference



24 February 2021

Mr P Graham
Executive Director
Consumer Building and Occupational Services
Department of Justice
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Dear Mr Graham

**CONSULTATION ON PRIVATE PLANNING CONSULTANT – NO PLANNING APPROVAL
REQUIRED CERTIFICATES**

Thank you for the opportunity to provide comments on the No Planning Permit Required Certificates Options Paper.

I would like to begin by outlining the services Council currently delivers regarding the determination of whether a planning permit is required and its practices that ensure that building permits are not issued without a planning permit where one is required.

The maintenance of these practices into the future is the preferred option.

Council's statutory planning officers currently deal directly with proponents, their building professionals and consultants on a daily basis to provide a definitive answer to the question of whether a planning approval is required for a particular development. At times this involves an iterative process through which a design may be modified by the proponent to avoid the need for a planning approval. Council's statutory planning officers are ideally placed to undertake these tasks as a result of their detailed working knowledge of the planning scheme.

In recent years this has evolved from advice being sought informally to a more formal process where a proponent, or their representative, makes a formal request for confirmation that a planning permit is not required for a particular development. Council currently charges \$138.00 for this service. An advantage of this process for the proponent is that if the proposed development is found to require a planning permit the request can be changed into an

application for a planning permit with the \$138.00 fee credited to the application for a planning permit. Council's practice is that the statutory planning officer who reviewed the request for confirmation that a planning permit is not required is responsible for the assessment of the planning permit application which delivers efficiencies in the assessment and maintains a single point of contact for the customer.

In addition to the above, Council has internal processes in place through which each application for building approval is reviewed by statutory planning officers to confirm that those application for which no planning permit has been issued do in fact not require a planning permit.


The alternative approach of enabling private planning consultants to issue a No Planning Approval Required Certificate is not supported as being the best way to cost-effectively deliver services to the development sector, particularly for the smaller scale development that is not likely to require a planning permit.

Some of the matters that need to be resolved before any decision be made to enable Private Planning Consultants to issue No Planning Approval Required Certificates include those set out as follows:

- Will it result in savings for the proponent? Will a Private Planning Consultant be able to issue a No Planning Approval Required Certificate for the \$138.00 fee currently charged by Council?
- Would the ability to issue a certificate rest with the Private Planning Consultant as a business entity or personally with one or more suitably qualified persons employed by the consultancy?
- Would the Department of Justice maintain an up-to-date register of businesses and/or persons who have the authority to issue a No Planning Approval Required Certificate?
- Would a No Planning Approval Required Certificate that was issued for development that was subsequently reviewed by a planning authority and found to require a planning permit remain a valid certificate?
- If a No Planning Approval Required Certificate was issued for a development that was subsequently found to require a discretionary planning permit, and so deprived the public of the ability to provide representations to the planning authority and appeal the granting of a planning permit, would this certificate remain valid?
- Would there be an ability for a planning authority to advise a Private Planning Consultant that a No Planning Approval Required Certificate had been issued for development that does require a planning permit and could the consultant then withdraw or cancel the certificate?

- Would there be an ability for a Private Planning Consultant to issue a conditional No Planning Approval Required Certificate (e.g. subject to providing a specified number of car-parking spaces or increasing the front setback to a specified distance).
- Who would be responsible for ensuring that any conditions attached to a No Planning Approval Required Certificate were satisfied?
- What mechanism would exist for a planning authority or an individual to refer a Private Planning Consultant for investigation, and possible sanctions, if they issued a No Planning Approval Required Certificate for development that requires a planning permit?
- Should Private Planning Consultants be restricted to issuing No Planning Approval Required Certificates to development of a certain type or scale or for land that is in a particular zone or not in an overlay area?
- Will the planning authority still be able to issue No Planning Approval Required Certificates and importantly still charge a fee?
- What mechanism will be in place to ensure that consultants who have been requested to provide a No Planning Approval Required Certificate do not simply ask the planning authority to provide advice on whether a permit is required?
- Will there be definitive State policy supporting removal of buildings and works (and stopping the use) if a No Planning Approval Required Certificate is found to be incorrect and a planning permit cannot be granted (or requires layout changes)?
- Will the No Planning Approval Required Certificate have a standard format and ensure that its only valid until there is a change to that planning scheme (i.e. amendment / new scheme) unless the structure is completed and/or the use is established?

As outlined above, it is considered that there are many issues to be resolved before the option of enabling Private Planning Consultants to issue No Planning Approval Required Certificates can be pursued as a practical option.

Should you have any questions or wish to discuss the comments provided above, please contact me directly 

Yours sincerely


Coordinator Planning Services