

ITEM NO: 14

**SUBJECT: REPORT ON THE IMPLEMENTATION OF ADAPTABLE HOUSING
UNDER THE EQUITY OF ACCESS AND HOUSING CHOICES**

FILE NO: CSR 88120

Recommendation:

That the Council receives the report.

Response Group Manager, Environmental and Customer Services:

Council at its meeting of the 20 November 2007 considered a report on the implementation of Adaptable Housing under the Equity of Access and Housing Choices when considering development applications. Council unanimously resolved to receive the report.

A Question Without Notice was submitted in relation to that report requesting responses to the following specific questions. The questions and answers are set out below.

Question 1

If the Council has assessed a D/A as meeting the requirements (option 1 on p.101) without the advice of a qualified person access consultant what is the Council liability with regard to being sued under the Disability Discrimination Act.

Answer Question 1

The Council's liability in relation to this matter would be no different to its liability for ensuring its legal obligations were being met for other development and building certification obligations under the various Acts and Regulations applicable. The Council must ensure that the relevant provisions of the Environmental Planning & Assessment Act and of the Council's LEPs are appropriately reflected in any development consent that is granted. If the Council fails to do so then the development consent may be open to challenge. If an aggrieved third party lodges a complaint with the Human Rights and Equal Opportunities Commission concerning the design of a building then this complaint would probably become the subject of conciliation, and possibly lead to orders being made against the property owner concerning the provision of adequate access.

It should be recognised that the Council's professional staff assessing relevant applications have prerequisite base tertiary qualifications appropriate for the work being undertaken. It would only be in the case of highly complex matters that expert advice, assessment or certification may be required. This is no different for other more complex specialised technical matters outside the range of expertise of assessing staff, such as highly specialised structural or fire engineering services.

Where a development consent includes a condition requiring compliance with the relevant LEP provisions, then if the applicant appoints a private certifier, it is the responsibility of that certifier to ensure that the conditions imposed by the Council are satisfied by the applicant.

Question 2

If the Council imposes a condition of consent to ensure adaptability requirements(as per option 2 on page 101) :a)Does the certification referred to mean a certificate of adaptability specified under the AS4299-1995, and b) What is the ‘statement’ which is the other option available to applicants? What qualifications are required by the person providing such a statement?

Answer Question 2 (a)

Yes

Answer Question 2 (b)

The statement or certification is a professional opinion by an appropriately qualified and experienced certifier/professional (for the purpose for which the certificate is given) and upon which the Council and others can rely.

There are no specific formal qualifications in Access as such. There is an Association of Consultants in Access, Australia. Membership of this organisation is discretionary.

The organisation was formed as an outcome of an extensive consultation throughout Australia with key groups and individuals in the disability field and industry. Organisations such as the Royal Australian Institute of Architects, Occupational Therapists Australia and the Australian Institute of Building Surveyors participated in the establishment of the Association.

The Secretary of the Association advised that they accepted professionals from a wide range of base qualifications and indicated that in addition to those identified above it also included quantity surveyors and town planners. Likely members were professionals from a wide field of interests who dealt with accessibility issues in the course of their work and wished to retain on going professional association. The Association is currently applying for a grant to develop competencies in the field.

Council’s building surveyors and planners all have base course qualifications for consideration as members. In addition many of Council’s building surveyors are members of the Australian Institute of Building Surveyors and our planners are members of the Royal Australian Planners Institute.

Where Council relies on a certificate it would consider the certifier’s qualifications and /or experience commensurate with the work being carried out. Where a proponent relies on a certificate, say in the case of a privately certified development, they would need to satisfy themselves concerning the accuracy of that certificate.

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