

Our ref:FS/TL

1 October 2019

Local Government Legislation Review
GPO Box 123
HOBART TAS 7001

Via email: lgreview@dpac.tas.gov.au

Dear Sirs

Comment on Reform Direction

We would like to take this opportunity to comment on behalf of our members regarding Council responses to certificates issued under section 337 of the Local Government Act 1993.

If appropriate for the purpose of this review regarding efficient Council practices and strategic review, we ask that consideration be given to standardising, and, where necessary, improving practices when Councils respond to section 337 certificate requests and whether there can be consideration given to further legislative change to drive and support this.

This would include for example, prescribed timeframes for responding to 337 requests (for example, no later than 10 business days from the date of issue of the request), prescribed content inclusion (for example, standardised practices as to copies of permits or other documents and the right to inspect plans) and a review of responses to questions to help minimise ambiguity (for example, by providing some standard form answers to certain questions or requiring certain levels of detail to be addressed). We would welcome the opportunity to be involved in a working group as appropriate.

Whilst we appreciate resourcing levels and internal practices differ across Councils, our members experience issues with obtaining and working with the information received from 337 certificates which can impact the progress of and settlement timeframes for a conveyancing transaction or due diligence reviews. This can have unintended consequences for their clients and the ability of the practitioner to perform their professional duties. It can lead to settlement delays, penalties or other negative outcomes.

Problems that our members face include:

- Significant wait times for responses to requests. This is becoming standard practice in the case of some Councils. We appreciate this can be due to resourcing constraints but in some cases there can be a 3-4 week wait from the issue of the request and then often requiring contact to follow up. Most residential purchases have a 21-30 day settlement timeframe when they become unconditional so this conflicts with industry expectation and requirement. Particularly so given there is no upfront vendor disclosure in Tasmania so searches and certificates are conducted after a contract has been signed with reliance on the rights drafted in the contract to protect the interests of the client.

- A further difficulty is that when a certificate is received 'just in time', if there are permits or certificates that should ideally be included but are not, this then requires further communication with the relevant Council officer. This issue also arises where responses in the certificate are unclear (discussed further below).
- Another concern is that when a certificate is eventually received which flags a problem, there is limited time to negotiate an outcome for resolution (for example, lack of occupancy or completion certificates) which can impact individuals moving into their new home, identifying works that need to be done at cost and attempting to negotiate a resolution with a vendor or seeking termination of a contract, all within a very short 21-30 day settlement timeframe.
- Some Councils still post out hard copies of 337 certificates as opposed to email which is a more acceptable method of communication for this purpose, particularly given the short conveyancing timeframes.
- There are often limited ways in which our members are able to seek prioritisation of a request or flag urgency when requesting the search. This can create problems with due diligence reviews or settlement timeframes. In the meantime, inability to obtain information does not change the contractual rights and consequences of our members' clients if information is not able to be obtained at critical times.
- Permit and occupancy questions currently pick up matters from 1994 onwards which makes it difficult to assess occupancy rights when the various permits were issued prior to 1994. A helpful prescribed question to include in the 337 request might simply be: "Does Council consider that the property has existing use rights as a residence?"
- Answering the applicability of Codes & Specific Area plans has changed. A question that used to exist in the 337 certificate response no longer appears. This should be available through this search.
- At times there are significant quality assurance issues. For example responses to questions are incomplete, ambiguous or incorrect necessitating further contact to the relevant Council department. This has included receiving answers to a question about whether a stormwater connection exists as "not applicable" when the appropriate answer should have been either "yes", "no" or "unknown". It is not uncommon to receive a certificate which says something is outstanding only to find as a result of further enquiry that the 337 certificate is wrong or where a question responding to whether there are outstanding certificates says "No Completion Certificate Required" when on clarification to the Council it should have read "No – completion certificate (is) required".
- There are different practices regarding what attachments are provided. For example, some Councils will provide every permit or certificate that was ever issued. Other Councils require separate authority from the vendor/owner to provide copies of permits or only provide documents on specific request or object to the right to obtain information that should properly be released in conjunction with a 337 certificate request.

A common approach amongst Councils as a starting point would make a significant difference and we see opportunity for legislative review, particularly in relation to timeframe and consistency of practice and response.

Suitably prescribed answers to some questions would assist including making it clearer whether there are issues with a property or not and which significantly affect the rights of our members' clients.

We thank you for this opportunity to comment and would welcome the opportunity to be involved further with this important aspect of review of the Act.

Should you wish to discuss any aspect of the above please feel free to telephone our Property & Commercial Law Committee representative Carey Higgins or Will Justo (Chair) on 62 348 022.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Francesca Saturno', with a stylized flourish at the end.

FRANCESCA SATURNO
DEPUTY EXECUTIVE DIRECTOR