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RECEIVED

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EPA 266-210

Ms Sally Smith
General Manager, Planning and Development
Department of Planning, Transport and Infrastructure
GPO BOX 1815
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Dear Ms Smith

Accredited Professionals Scheme – August 2018

Thank you for the opportunity to comment on the draft Accredited Professionals Scheme paper, in particular the *Planning, Development and Infrastructure (Accredited Professional) Regulations 2018* (the Accredited professional regulations). The Environment Protection Authority's (EPA) interest in this paper is limited as it assumes, in order to act as a referral body, it does not require EPA delegates to be Accredited Professionals. It does however have an interest in the complaints section of the Accredited Professional regulations.

The EPA considers that there may be circumstances where an Accredited professional has not followed correct agency referral processes and the EPA may wish to raise a complaint under Part 6 of the Accredited professional regulations.

Under section 47(2) of the *Environment Protection Act 1993* the EPA is required to defer its determination of a licence application until a relevant development authorisation is obtained and, when it is obtained, any relevant conditions are complied with. The EPA periodically becomes aware of instances, typically when the proponent applies for an EPA licence, where the development application has not been referred to the EPA. Due to the irregular processing of the development application, the EPA is concerned that such a development approval is likely to be invalid. Therefore, in such instances, the EPA is likely to consider that it does not have a relevant development authorisation before it and would be inclined not to issue a licence.

Currently, where a development application referral to the EPA has not occurred our only course of action is to apply to the Supreme Court to undertake a judicial review. However, the process outlined in Part 6 of Accredited professional regulations would enable the EPA to raise a complaint where it may question the processing of the application (including any referral required pursuant to section 122 of the *Planning, Development and Infrastructure Act 2016 – PDI Act*) to ensure any approval issued is valid.

Before the Accredited Professionals regulations are finalised, the EPA recommends that the following matters should be clarified:

1. If the Accreditation authority considers an irregular process has occurred, is the complaints process sufficient to determine if an approval (or consent) is invalid, and if so, what mechanisms might be used to rectify this?
2. If the complaints process finds an irregular process has occurred, could the relevant authority or even the Accreditation authority revoke the relevant approval (or consent)?

As you are aware, the EPA is working to ensure any referrals to the EPA under the PDI Act are clearly articulated and have sound environmental grounds to give confidence to accredited professionals working as a relevant authority. In particular, the EPA is advocating that where the development includes a *prescribed activity of environmental significance* requiring an EPA licence to operate, that the application is referred to the EPA. An EPA referral at the development application stage will remain critical in view of the requirements of section 47(2) of the *Environment Protection Act 1993*, which compels the EPA to give consideration to any development authorisation and any conditions directed by the EPA, before determining whether to issue a licence and what conditions it should include.

For further information on this matter, please contact Kym Pryde on [REDACTED] or [REDACTED]

Yours sincerely



Kathryn Bellette

**DIRECTOR, STRATEGY AND ASSESSMENT
ENVIRONMENT PROTECTION AUTHORITY**

Date: 15/10/18