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Dear DPTI Planning Engagement

Accredited Professionals Scheme Draft Regulations and Fact Sheets

The Scheme Draft includes draft *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2018*, a draft *Code of Conduct for Accredited Professionals*, and draft *Competency Requirements* for the different levels of accreditation.

The Scheme Draft starts to provide clarification of a critical part of the new Planning System Reforms, but only a part.

The *Accredited Professionals Scheme Draft Regulations* do not provide a comprehensive perspective in themselves on how accreditation and decision-making will operate. They are only a limited part of the overall system and reliant upon a range of other yet-developed elements, ie Assessment Pathways arrangements, Public Notification designations, 'Deemed-to-Satisfy' scope, 'Minor' variations, performance assessment etc. A complete package and context should be provided to allow proper and informed feedback before any inter-related element is finalised and confirmed.

Comprehensive submissions were provided in April 2018 to a Discussion Paper, but it is uncertain if and how the issues that were raised were addressed, many appear not to be, given the lack of available documentation. For meaningful engagement and consultation there should be a transparent, compressive and accountable line of sight from proposals, drafts and detailed instruments. A What-We-Have-Heard summary is a first step but inadequate. Copies of submissions, collation of issues, responses thereto and reasons why outcomes (changes or not) are adopted should be published for public scrutiny and critique.

Part 1 – Preliminary – no comment

Part 2 - Classes of accreditation

The classes of Accreditation provide a hierarchy of different scope of responsibility and requisite experience and skills for corresponding functions and responsibilities. Regulation 5 proposes four levels of accreditation for planning and building professionals.

The four levels of accreditation for planning professionals are proposed to be:

- **Level 1 – Assessment Manager** - assess Deemed-to-Satisfy development, performance assessed development and land division, where there is no public notification requirement.
- **Level 2 – Assessment Panel Member** - assess Deemed-to-Satisfy development and performance assessed development, including where there is a public notification requirement.
- **Level 3 – Performance Assessed Development** - assess Deemed-to-Satisfy and performance assessed development, where no public notification.
- **Level 4 – Deemed-to-Satisfy Development** - assess Deemed-to-Satisfy development.

To gain an accreditation at one of these levels an Applicant will need to either:

- demonstrate compliance with Competency Requirements;
- have a minimum amount of experience (Level 1, 5 years; Level 2, 2 years; Level 3, 3 years and Level 4, 1 year); and
- have at least 6 months experience in certain nominated areas.

or be a member of a recognised equivalent professional scheme, which is anticipated to be PIA membership:

- Registered Planner – Level 1 accreditation
- Full or Associate Member – Levels 2 and 3 accreditation.

The four levels of accreditation for building professionals will be:

- **Level 1 – Building Surveyor** - grant building consents, planning consents for Residential Code development (eg Deemed-to-Satisfy development) and undertake building inspections.
- **Level 2 – Building Surveyor (limited)** - grant building consents for buildings not more than 3 storeys and with a floor area of not more than 2,000m² and undertake building inspections.
- **Level 3 – Assistant Building Surveyor** - assess building consents for Class 1 and 10 buildings of not more than 2 storeys and with a floor area of not more than 500m² and undertake building inspections.
- **Level 4 – Building Inspector** - undertake building inspections of Class 1 and 10 buildings, roof truss and swimming pool safety inspections.

Level 3 is unduly limiting and restricting on practical operations. Should also provide for assessment of Class 2-9 up to 500m² in accord with current arrangements.

Accreditation at Levels 1 to 3 can be gained either by compliance with Competency Requirements including having the requisite amount of experience (Level 1, 3 years; Level 2, 2 years; Level 3, 6 months), or by being a member of a recognised equivalent scheme, eg AIBS accreditations. The titles given to accreditations at Levels 1 to 3 should align with those used by AIBS.

Accreditation at Level 4 can be gained by demonstrating compliance with the Competency Requirements, which include a minimum of 6 months experience. Given obligations with inspections and critical life-safety matters the competency and accreditation should be at least equivalent to a Level 3.

Accredited professionals can either work in private practice or be employees of a council or State government body.

Generally, the extent of experience and core skills for planning (level 3 and 4 a total of 3 and 1 years respectively and 6 months in any 3 of 14 'Technical Skills' rather than specific applicable key development assessment core skills) is inadequate. Similarly, for building level 1, 2 and 3 / 4 (a total of 3 and 1 years and 6 months respectively) is inadequate. The 2 years' experience for panel members is also low, when a rise in professional standards has been promoted.

The Planning Level 1 Accreditation is not restricted to an Assessment Manager but also recognises other functions. The associated heading of Assessment Manager conflates and confuses a skill level with a particular role. The Level 1 of Accreditation should not be so termed. Practitioners can attain Level 1 Accreditation but not necessarily be an Assessment Manager, which are limited to one per Assessment Panel.

Level 4 Planning and Building underestimate the complexity and responsibility of the functions. Planning Deemed-to-Satisfy interpretation is often not as straight forward as may be assumed, and particularly when under time (fee) pressure to assess. In particular, Building Level 4 inspection of buildings, roof truss and swimming pool safety is a complex, onerous life safety obligation and high responsibility that need comprehensive experience (vastly more than 6 months) and specific skills.

It is questioned if there is a need for Level 4 given inadequate competency requirements. Level 1 to 3 are best placed to undertake the critical and life-safety inspections.

Council Employees

Only an Assessment Manager needs accreditation, with other staff able to operate under delegation.

The process and practicalities of the required 'Peer Reviewed Compliance' for Assessment Managers against 5 core planning and professionalism competencies, is unclear, uncertain and requires comprehensive delineation.

At this stage a Building Certifier does not necessarily require accreditation, as a Council will be a Relevant Authority and can delegate this function to staff at its

discretion. However, additional future regulations may prescribe an equivalent scheme to current provisions where councils are required to seek and consider the advice of a building certifier in issuing a building consent.

In relation to other functions, including issuing emergency orders and fire safety notices and undertaking building and swimming pool inspections, it is unclear whether council staff will be required to hold an accreditation. Clarification in future regulations and practice directions is required.

The lack of need, and dis-incentive with duplicate fees, to require and promote individual professional accreditation undermines the broader increased professional standards and independent accountability for all those professionals within the system.

Part 3 - Division 1 – Obtaining accreditation

The “accreditation authority” will be the Chief Executive of the Department of Planning Transport and Infrastructure (DPTI), or delegate (another person or body).

A second ‘accreditation’ fee (indicated at \$600-800) in addition to a minimal administration cost for official registration and central record keeping undermines and unnecessarily duplicates the recognised professional association membership and is unwarranted. Professional Association (eg PIA, AIBS) accreditation, and CPD (Continuing Professional Development), arrangements should be accepted and not require further review. Another ‘accreditation’ assessment fee is not justified.

The annual registration requirement seems excessive, given most professionals also can maintain accreditation with other entities (eg. PIA or AIBS). This is an unreasonable impost and duplication.

Part 3 - Division 2 – Cancellation or suspension of accreditation

Having a clear process around suspension and cancellation of Accreditation is sensible and the criteria proposed in the draft Regulations seem appropriate. Utilising cancellation and suspension will be key to ensuring the integrity of the system. The current arrangement for private certification suffers from a small minority who compromise integrity and credibility with little ramification and redress.

The State Government will need to ensure that sufficient resources are allocated to the “accreditation authority” to make the proposed system workable. It is critical to appropriately monitor, investigate and deal with complaints and or failures of persons accredited under the scheme.

Consideration should be given to a regime of fines as well as suspensions and cancellations.

Part 4 – Continuing Professional Development

Recognition and arrangements with relevant professional associations for membership and CPD, eg PIA or AIBS, is logical and supported.

The CDP requirements differ between DPTI and Associations, and should be made consistent and to the higher level.

It is unclear if DPTI will offer its own alternative CPD technical training.

Level 4 Building Inspector should equally require a suitable level of CPD.

Part 5 and 6 – Audits and Complaints

Auditing should be biased towards the Private Certifiers due to Local Government already being subject to a number of auditing and decision review processes, plus high public transparency and community accountability, which considerably reduce the risk of maladministration and or inappropriate decisions.

The “accreditation authority” has significant obligations, discretion and accountability for the operation of the scheme. Full and proper responsibility must be applied to responsibilities and the ‘authority’ provided with adequate resources to regularly and comprehensively audit, investigate and uphold professional standards and enforce compliance.

While there will be high expectations upon Councils from the community, they cannot be involved as they have no responsibility, receive no fees for applicable matters and have limited general resources to pursue such matters. The responsible ‘authority’ must be fully responsible and accountable.

Planning authority, including Private Certifiers, interpretation, judgement and decisions must be transparent and readily accessible. The new system will operate through the new ePlanning on-line portal. All relevant information must be published, including publishing of interpretations, assessment reasons and determinations, together with decisions. This would aid full transparency, accountability and liability for judgements and decisions, and flow-on implications, eg errors, omissions, challenges and redress.

Only the Applicant or Planning Authority for the decision, eg Private Certifier, can appeal the decision and its basis. There should be specific defined timely appeal opportunities for others, eg Councils and/or neighbours/public, to critique critical judgements and decisions.

Audit of building professional is equally critical, including Level 4. It appears audits are limited to ‘assessments’ whereas they should also apply to ‘inspections’.

Code of Conduct

The Code-of-Conduct has a fair scope and range of typical integrity principles. Transparency of all information, judgements, reasons and decisions will aid accountability.

Key elements of the Code-of-Conduct address confidence and credibility of process, assessments and determinations to avoid conflicts of interest and perceptions of bias, including:

- *“... promotes or protects the public interest ...”*
- *“... act with honesty, integrity, good faith and equity and must not discriminate toward any person ...”*
- *“... decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts obtained, and supported by adequate documentation.”*
- *“... not perform a statutory function where there is either a real or perceived conflict of interest between their professional duties and their personal or business interests ...”*
- *“... not seek or accept a gift or benefit that is intended to, is likely to or could be perceived as likely to, cause them to act in an unfair or biased manner ...”*
- *“... have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that the accredited professional may be biased in carrying out any aspect of their professional role. They shall not carry out that aspect due to bias unless the apprehension arises from the fact that the accredited professional is to receive a fee for carrying out work in relation to an application or any other statutory function under the Act.”*

There is an inherent tension, at the least perceived, between the Applicant payment and likely expectation for a service and outcome that underpins the business of private certifiers, as recognised in last quote, relative to the tenor of the majority of obligations. Compared to a public authority like a council where the service and expectations encompass a full spectrum of interests; eg Applicant, neighbours, community, Elected Members, Ombudsman, ICAC etc; and majority of financial support for the assessment function is from general rate revenue.

This tension is heightened where performance assessment, interpretation, discretion and judgement is involved. It is intimated Private Certifiers will be empowered to undertake performance assessed development. This is viewed with caution given potential scope for wide discretion. There are a lack of ‘checks and balances’ as described above.

The suggested limitations to where there is no public notification is inadequate. The philosophy of avoiding public notice for development within the broad scope of policy intent will potentially lead to limited such applications, and potentially allow for significant development in certain locations, eg 3-storey apartment buildings as illustrated in Assessment Pathways Discussion Paper. The nature of performance assessment also relates to a range of sensitive types of development, eg heritage

buildings or conservation/character areas, and the need for other specialist and design inputs.

Performance assessment is fraught with discretion, complex judgement, obligations and accountability, even if may be anticipated to be limited to 'minor variations' from Deemed-to-Satisfy development as indicated in subsequent advice from DPTI. There must be re-consideration of appropriate strict limitations or exclusion of private certification of performance assessed development and limitation to Deemed-to-Satisfy at this time. At least until the new systems full suite of *Regulations, Practice Directions, ePlanning* and *Planning and Design Code* policy is resolved, understood, implemented and reasonable experience attained.

To help elevate the standards of development design, Registered Architects should be engaged to design and prepare applications in respect to designated larger, complex or sensitive (eg heritage, character, main streets) 'classes' of development.

It is trusted this feedback assists with SPC and DPTI refinement and resolution of the draft *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2018*, draft *Code of Conduct for Accredited Professionals*, and draft *Competency Requirements*.

Should you have any questions please contact David Brown, Principal Policy Planner, on [REDACTED] or [REDACTED]

Yours faithfully



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CHIEF EXECUTIVE OFFICER