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City of
Norwood
Payneham
& St Peters

17 October 2018

Michael Lennon
Chair, State Planning Commission
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Dear Mr Lennon

ACCREDITED PROFESSIONALS SCHEME DRAFT

Thank you for the opportunity to provide input and feedback in the Accredited Professionals Scheme Draft (the draft Scheme).

The Council supports the intent of demonstrating an increased quality of decision making in the planning system, however there are a number of concerning proposals and shortfalls in the scheme, which we would like to draw your attention to.

The draft Scheme builds on the Accredited Professionals Discussion Paper released in April 2018. It is disappointing that there is not a greater connection and transparency between feedback on the earlier Discussion Paper and this next iteration of the scheme; an issue which is explored further in this submission.

The draft Scheme provides further operational details relating to accredited professionals, however some details remain unaddressed or unresolved. Procedural details are expected to be articulated in the future general Regulations for the *Planning Development and Infrastructure Act 2016* (the PDI Act), while other details, such as the scope of different categories of development will be determined within the Planning and Design Code (the Code). It is very challenging to provide meaningful feedback on this draft Scheme, as well as other issues more broadly in the planning reform program, with so many concurrent, interrelated features yet to be determined.

Set out below are a number of comments, concerns and areas where further clarification regarding the accredited professionals scheme is required.

Feedback and Consultation

In response to the Discussion Paper released in April 2018, the City of Norwood Payneham & St Peters provided an extensive submission containing a range of questions, concerns and recommendations. The 'What We Have Heard' report released in June 2018 provided a summary of some, but not all, of the points raised by this Council and others through the consultation period.

It is disappointing that there has not been a paper or summary document released together with the draft Scheme, to explain how the draft Regulations were formed in light of the feedback received from the Discussion Paper. It is noted that a number of the comments highlighted in the 'What We Have Heard' report have not been adopted in the draft Scheme without explanation as to why these were not included.

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Disappointingly, concerns which have not been addressed in the draft Scheme include, but are not limited to:

- uncertainty surrounding the role of an Assessment Manager and the potential to act in a private capacity, engaged outside of the relevant council (which has been the source of widespread confusion and discussion amongst the sector);
- Justification of privatisation of ‘merit-based’ assessments and loss of local government decision making;
- lack of accreditation for policy planners and State Government decision makers (including Code authors and State Commission Assessment Panel);
- uncertainty and potentially poor outcomes relating to personalised appeals of assessment manager decisions;
- annual renewal period being too frequent;
- Local governments’ role in “mopping up the mess”; and
- insufficient detail about minimum standards for auditing

These concerns are discussed in more detail below.

The draft Scheme was accompanied by Fact Sheets, highlighting key points of the scheme as relevant to different decision makers. Although these Fact Sheets provided an accessible source of information to practitioners, the decision making powers of each level of accredited professional is presented as though it is an established framework, making it difficult to determine what is the subject of feedback and influence through this and other reform processes. For example, a Level 3 planner is indicated as being able to assess ‘performance – based’ developments (presumably referring to performance assessed development). It is understood that the approved activities of the accredited professionals are yet to be established and will be determined in future Regulations.

The ability of a private planner to undertake a subjective assessment is a significant concern to many councils. Given this is such a contentious issue, it is considered ill-advised to present this designation of decision making powers as a fait accompli. Furthermore, such a proposal has been put forward without warrant as it is not discussed in the What Have We Heard report, which is concerning in terms of how decisions have been made and what processes have influenced the draft Scheme.

Whilst the draft Scheme is pitched at practitioners, it is considered that there is still a need to keep the community, or at the very least key community stakeholders, informed of the proposed changes. The community are directly affected by ‘the who and how’ of planning decisions. Staff at this council have responded to requests from key community groups to provide further, more accessible, information on this topic. It is recommended that information is provided for all topics in the planning reform program explaining in lay-person’s terms what is happening.

There is concern more generally across the planning sector that consultation, communication and important iterative processes required in the planning reform program are being significantly driven and compromised by the pressure of deadlines. Given the magnitude and implications of the new planning system, it is imperative that the main objective of the program is to deliver the best possible outcomes, rather than being so significantly influenced by delivery timelines set by the previous State Government.

[Confusion of Relevant Authorities and Accreditation Levels](#) [Accreditation vs Approved Activities](#)

There appears to be significant confusion amongst practitioners regarding the role of relevant authorities as compared to the different accreditation levels. The relevant authorities as outlined in the PDI Act include:

- | | |
|----------------------|---------------------------------|
| • assessment panels; | • assessment managers; |
| • the Commission; | • accredited professionals; and |
| • the Minister; | • councils. |

It is understood that the decision making powers will be assigned to the different relevant authorities through future Regulations. The PDI Act requires some relevant authorities to hold an accreditation, for example Section 83(c) and Section 87(b)(i) require a member of an assessment panel and an Assessment Manager to be accredited professionals.

The draft Scheme and supporting information are unclear in the distinction between accreditation (a process of demonstrating and reviewing competency) and appointment to a position or engagement in a role which enables a person to perform certain functions. Section 88(2)(a) of the PDI Act states that *'the accreditation scheme may make different provision according to the function or role that an accredited professional is to perform under this Act, including in relation to particular aspects of development assessment or control'* but does not require this to be the case. This has caused much confusion due to the ability for roles to be performed both in the public and private sector, leading to conjecture about the Department's intent in setting these roles. There is broad support for the limiting of these opportunities, in all but quantifiable assessment, to the public sector, due to the potential for misinterpretation or misuse, leading to poor development outcomes.

The new accredited professionals scheme is expected to be the new benchmark for accreditation amongst planning and building professionals. As such, there is likely to be a range of people who wish to be accredited in order to demonstrate their competency, be included in the recognised list of professionals, or be 'job ready', but won't necessarily be issuing consents or performing other functions such as those outlined on the Fact Sheets (at least at the point in time of accreditation). Such scenarios include, but are not limited to:

- a currently unemployed professional who wishes to hold an accreditation so as to be 'job ready' for positions which require accreditation, but is unsure whether they will be employed by a council, private company, or State government department. This individual is unlikely to take out insurance (a currently drafted requirement of accreditation) if they are likely to be covered by the Local Government Association Mutual Liability Scheme (LGAMLS), the liability insurance of the private company, or hold a position in State government;
- a private planning consultant who wishes to obtain a Level 1 accreditation so that they can be considered in the future for (contracted) Assessment Manager roles in regional councils, but don't currently undertake any assessments or issue consents;
- a qualified person in an allied field who wishes to obtain a Level 2 accreditation so that they can be considered in future for assessment panel positions, but is not currently engaged in planning activities;
- employees of a private planning consulting firm or sole practitioner who wish to be accredited in order to demonstrate a level of competency to clients, but intend to only provide services such as representing applicants or representors in development assessment matters, assisting with the preparation of Planning and Design Code (Code) amendments or other policy documents, facilitating public consultation, or being contracted to assist local councils with various other functions; or
- a local government employee who wishes to be accredited in their own right for their own professional interests and commitment to the profession, but who (a) hold a management position which does not involve determination of development applications (b) only intend to issue development consents or approvals as a delegate of an Assessment Manager, CAP, or Council, and/or (c) will primarily be working as a policy planner.

In light of the above, it is considered that there is a genuine need for the new accreditation scheme to recognise the qualifications of individuals as a separate process to bestowing decision making powers as a relevant authority.

Regulation 16 of the draft Scheme requires a professional to hold professional indemnity insurance that is reasonable and adequate taking into account the amount and nature of work undertaken by the accredited professional. This regulation also allows a condition to be imposed which limits the scope of the accreditation. It is anticipated that this regulation could, if so desired by the accreditation authority, allow for some of the circumstances listed above. That is, a circumstance where a planner who wishes to be accredited but does not wish to undertake activities requiring personalised insurance, does not have to take out insurance for the purposes of accreditation and would have a conditional accreditation prohibiting them from undertaking those specified activities. Clarification on this point is requested.

As a preferred alternative, Regulation 16 could be amended or removed, such that insurance is not required in order to be granted accreditation. Instead, insurance could be a requirement at the time of being appointed or approved as a relevant authority. This would provide a clear distinction between the accreditation scheme and the appointment of relevant authorities with decision making powers.

The above recommended approach ensures that the accreditation scheme:

- (a) provides a system for recognising the qualifications and competencies of individuals;
- (b) can allow the PDI Act or Regulations to specify requirements of an individual to act as a relevant authority, including minimum levels of accreditation (as a measure of the capability required to fulfil the role) and ensuring the individual or position holds an appropriate insurance policy; and
- (c) provides a consistent 'benchmark' for different purposes such as employers assessing the capabilities of potential job candidates, or for the Court to determine who is qualified to provide evidence as an expert witness etc.

Assessment Manager

The complexities associated with the role of Assessment Managers is explored further below, however the recommended approach of clearly separating accreditation from relevant authority roles would also address a concern regarding private Assessment Managers.

Under the draft scheme, a private planner could obtain Level 1 accreditation for the purposes of acting as an Assessment Manager for one or more councils. Their accreditation would presumably require a condition to ensure that any functions, powers or duties attributed to them through their role as Assessment Manager would be limited to when they are acting in that role for that council e.g. a private planner contracted as the District Council of Coober Pedy Assessment Manager could not use the Level 1 accreditation to assess land divisions outside of Coober Pedy.

As the preferred alternative, the recommended approach of clearly separating accreditation from appointment as a relevant authority would allow the private planner to be recognised as a Level 1 planner (as a recognition of competency and qualification only), but the decision making powers would clearly lie with the position of Assessment Manager (once appointed/ delegated). That is, the approved activities are attached to the role, not the person.

Names and Titles

The Scheme as currently drafted assigns names/titles to the different levels of accreditation. This is a significant contributor to the confusion between accreditation and relevant authorities. As currently drafted, the following terminology applies to both a level of accreditation and a relevant authority position:

- an 'assessment manager' could be an assessment manager appointed as a relevant authority or a person who simply holds a Level 1 'assessment manager' accreditation but who is not a relevant authority;
- an 'assessment panel member' could be a member of a Panel which operates as a relevant authority or a person who holds a Level 2 'assessment panel member' accreditation but does not sit on a panel;
- an 'accredited professional' could refer to a relevant authority (as outlined in the PDI Act) or a person who holds one or more of the currently drafted 8 levels of accreditation but does not currently act as a relevant authority (due to their type of employment/role or conditions of accreditation).

It is strongly recommended that the various accreditation levels are not attributed with function titles, but simply referred to as a Level X professional, to prevent confusion.

In light of the above comments, a recommended alternative approach for planning professionals is outlined below:

Level of Accreditation	Requirements for Accreditation
Level 1 Planning Professional	<ul style="list-style-type: none"> - Specified qualification - X Years' experience (including 6 months experience in 3 specified technical skills) - Peer reviewed compliance
Level 2 Planning Professional	<ul style="list-style-type: none"> - Specified qualification - Y Years' experience (including 6 months experience in 3 specified technical skills – <i>support of this requirement is subject to the nature of the specified technical skills</i>)
Level 3 Planning Professional	<ul style="list-style-type: none"> - Specified qualification - Z Years' experience (including 6 months experience in 3 specified technical skills)

Note this recommendation includes only 3 levels as it is considered that private planners should be limited to deemed-to-satisfy as discussed further in this submission.

Relevant Authority <i>(some examples – not an exhaustive list)</i>	Accreditation Requirement	Approved Functions/Activities	Insurance requirements
Assessment Manager	Level 1	<ul style="list-style-type: none"> • Land Divisions • Performance Assessed (<i>including DTS but excluding publically notified developments with representations opposing</i>) 	Covered by LGAMLS
Council Assessment Panel (acting as an entity not individual members)	Level 1 or Level 2	<ul style="list-style-type: none"> • Land Divisions • Performance Assessed (<i>including DTS and publically notified developments</i>) 	Covered by LGAMLS
Accredited Professional	Level 3	<ul style="list-style-type: none"> • Deemed-to-satisfy development 	Require own insurance

It is noted that the term 'accredited professional' will be particularly challenging to distinguish, given the Scheme is referred to as the Accredited Professionals Scheme. Perhaps greater distinction could be made by referring to the *Accredited Professionals Scheme* in its entirety but distinguishing each of the levels of accreditation as referred to in Table 1 i.e. 'Level 1 Planning Professional' and referring to the role of an accredited professional as *accredited professional (relevant authority)*.

Assessment Managers

The draft Scheme and Fact Sheets imply that a person appointed to the position of Assessment Manager must hold a Level 1 accreditation, however this does not appear to be specified in the PDI Act or draft Scheme. As outlined above, the PDI Act specifies that assessment managers and assessment panel members must be accredited, but does not specify what level. The draft Scheme attempts to articulate this by titling each level of accreditation the same as a relevant authority position or a category of development. As outlined in Tables 1 and 2, it is recommended that a clear distinction be drawn between accreditation and relevant authority roles. Specifically, it is recommended that Regulations 6, 7 and 8 are amended such that the different relevant authorities are listed as distinct from the title of accreditation levels, but the minimum accreditation requirement is still specified as a subsection of each Regulation.

The removal of councils as a relevant authority for planning consent and introduction of Assessment Managers has various implications for processing and determining development applications. Currently, a Council delegates decision making powers to a CEO who can then delegate powers to staff. The role of a manager or team leader of a development assessment unit normally involves overseeing and occasionally reviewing decisions of other staff, however any decisions are issued from a delegate of the Council. With respect to any appeals to these decisions, the respondent is listed as the Council.

In the new system as set out in the PDI Act, the Assessment Manager is an authority in their own right so will be delegating directly from their position to other staff. Any appeals to the decisions of the Assessment Manager or their delegates would be in the name of the Assessment Manager, although it is unclear whether the respondent would be listed as “City of Norwood Payneham & St Peters Assessment Manager” or “Mr Joe Smith”. In either case, but particularly if it is the latter, it is unclear what complications and legal liabilities might arise if the person appointed as assessment manager left the council or was otherwise absent. Clarification on this point is required as this is a critical issue for the way councils manage their staff resource and manage risk.

The personalisation of the assessment manager role creates a real, or at least perceived, increased level of responsibility on the person in that position. Potentially, this may result in some Assessment Managers increasing the level of scrutiny applied to consents issued by other staff, which may have the unintended consequence of extending the assessment timeframes of applications. An Assessment Manager risks his or her accreditation and insurance if a complaint is sustained or a procedural error is made in their name. This is likely to lead to a very risk-averse management approach which will have implications for resourcing.

As an alternative, some councils may permit any staff that hold a personal accreditation/authorisation to process applications in their name rather than the Assessment Manager's. That said, it is not expected this will be a common approach in the interests of consistency for council operations and the limitations likely placed on the accreditation/authorisations of individual staff. Nevertheless, clarification as to whether this would be an option for councils is required. Clarification should be provided as to what administrative arrangements, if any, may need to be adopted for periods of time when the appointed assessment manager is on leave.

DPTI staff have previously expressed an understanding that a council can have more than one Assessment Manager, whether to generally share the responsibilities of the role or to designate different tasks to different Assessment Managers. There is a contrary understanding that the wording of the PDI Act must be interpreted as there only being one Assessment Manager per council. Clarification on this critical point is required.

Privatisation of Planning

The draft Scheme outlines 4 levels of planning accreditation. The supporting Fact Sheets indicate that an accreditation at Levels 3 and 4 enable that person to be an ‘accredited professional’ as a relevant authority – i.e. once you are accredited at Level 3, you are able to issue consents for performance assessed developments. Even though the decision making powers for each relevant authority are yet to be determined by the Regulations (although this isn't clearly articulated in the Fact Sheets), the structure as proposed has two levels ‘below’ assessment panel member in order to facilitate one level to deal with performance assessed development and another level to deal with deemed-to-satisfy developments. That is to say, even though the draft Scheme itself doesn't specifically state that private planners will be able to undertake performance assessed development, the proposal for four levels confirms this as a clear intention.

The Council holds serious concerns about the privatised decision making proposed through this scheme. The Accredited Professionals Scheme Discussion Paper proposed four levels of planning accreditation; Levels 1 and 2 remain largely unchanged however Level 3 was proposed to be an accredited planning professional who is able to assess deemed-to-satisfy development and Level 4 was proposed to be a land division professional.

The ‘What We Have Heard’ report acknowledged that there was “overwhelming” support for the removal of Level 4 land division accredited professional on the basis that there are too many potential external and/or council related factors involved in this process and that professionals would not have the required knowledge. In the City of Norwood Payneham & St Peters submission, concerns were

also raised regarding the council often being the only repository of important records, sometimes containing information on issues which affect the development constraints of a site. The originally proposed land division accreditation level was removed, presumably in response to the comments received during consultation, however, it was replaced by the currently proposed Level 3: Performance-assessed development.

The 'What We Have Heard' report did not articulate any support being raised during the consultation period for the introduction of this role and the private assessment of performance assessed development is considered to carry some of the same concerns as land division assessments. As such, the introduction of the proposed Level 3 accreditation is a curious and concerning proposal. There has been no evidence or statistics provided to demonstrate that this is a sensible, risk averse first step in introducing the scheme. At the very least, the introduction of private planners dealing with performance assessed development should be phased in once it is demonstrated that there is community confidence that there are no (or an 'acceptable' level) of complaints or investigations into the expanded deemed-to-satisfy 'services' that a private practitioner can perform,

Currently private planning certifiers are able to process Residential Code complying (Rescode) developments. Even though processing 'tick-box' decisions should be a straightforward process, the experience of this Council, and reinforced by other Councils, is that a variety of issues can arise through the private certification of planning consents. These issues include, but are not limited to, poor processing of documents such as two conflicting plans forming part of the planning consent, questionable determinations of 'minor' variations, disputed measurements and definitions, and challenges to the processing of applications (refer *Cairo v The Corporation of the City of Norwood Payneham & St Peters & Anor* [2018] SAERDC 11 (21 February 2018) and *Mundy v City of West Torrens* [2016] SAERDC 30 (29 August 2016)).

Due to the cost and delays involved in Councils taking legal or complaint actions, very few discrepancies are formally or legally challenged. Instead, once a discrepancy, variation or breach is identified by Council staff, often the applicant/private certifier agree to follow the correct processing procedure, or the issue is otherwise resolved, through sometimes resource-intensive means. It is important to note, however, that the volume of formal complaints or legal challenges is not at all reflective of the common, regular experiences of councils in dealing with these issues. Nevertheless, it is requested that data be provided illustrating the nature and volume of formal complaints or inquiries received by DPTI in relation to private certifiers. It is also important to note the large extent of, and difficulties associated with, enquiries, compliance, and other post-approval processing councils currently undertake for applications determined by other authorities (whether private certifiers or SCAP). The consumption of council resources is in no way matched by the base lodgment fee of \$64 currently provided to councils to undertake these services.

It is disappointing to note that the Accredited Professionals Scheme draft has been prepared without proper examination of this past history of Certifiers in South Australia and instead has been broadened in scope, volume and complexity by extending this under the Scheme, including to the assessment of Performance Assessed applications. This proposition is of significant concern to this Council, without first trialling and testing a staged phasing in of opportunities for Accredited Professionals.

If compliance and complaints are currently present in a system where private planners can only undertake 'tick-box' applications, it is considered that enabling private planners to undertake subjective performance assessed development will further complicate and increase risks in the new planning system. Communities and neighbourhoods will suffer under this approach, as while complaints and investigations may be possible, these will unlikely "catch" the volume of "mistakes" and is unlikely to reverse built form outcomes

Subjective assessments such as Performance Assessed pathway should only be undertaken by independent bodies which operate to serve and protect the public interest. Local Governments in particular are the most in touch with the local area and community, have the best access to information such as site history, and are drivers of the strategic direction of the council area. Councils also have access to many internal expert staff such as heritage, infrastructure and assets, stormwater, arboriculture, traffic etc. It is unlikely that a private accredited professional will have access to the same level of expertise, and is more unlikely to outsource to these experts where a formal referral is not required. To remove decision making powers from local councils is considered to be a fundamentally flawed process.

There is concern as to whether private professionals offering a commercial service of subjective assessment (as opposed to 'tick-box' processing) can operate impartially given they are engaged by the applicant. Private planners are paid by applicants, and unlike local government officers, do not have a statutory responsibility to the public interest. Councils will continue to be the first port of call for the community who have questions or concerns regarding new development, regardless of which relevant authority processed the application, because private planners will be perceived to be (or actually are) less accessible, transparent and accountable as compared to local government. The true costs of the new privatised planning assessments need to be carefully considered and better distributed in the fees, charges and compliance responsibilities in the Scheme.

Notwithstanding the above, it should be noted that support for private planners to process deemed-to-satisfy development is in-principle support only, given that the scope of what development falls into the deemed-to-satisfy category, and the relevant criteria, is yet to be determined. It is difficult to provide meaningful recommendations, without understanding the full scope of what types of development this might involve.

Accreditation at State Level

The intention of the accreditation Scheme is to improve confidence in the professionalism of decision making processes. In ensuring a sliding scale of qualifications and experience in line with the assessment of more complex based decision making, the required professional standards of accreditation and governance should be applicable for all panels operating in South Australia (and those who advise them), regardless of whether these sit within local or State Government. In response to the Accredited Professionals Discussion Paper, several submissions including the City of Norwood Payneham & St Peters', highlighted a concern that the State level decision makers are not required to be accredited, leaving this open to perceptions of non-transparency and inconsistency.

It is disappointing that there has been no explanation provided as to why State level decision makers remain exempt from the scheme. For consistency and transparency, the proposed Scheme should not set a higher standard of requirement for Council Assessment Panel through accreditation, registration, annual fee, annual CPD requirements, auditing, complaints and investigation, than for the State Commission Assessment Panel which makes decisions at a higher level of complexity under the Act. As such, it is recommended that the Commission, its delegate (SCAP) and advisors are also the subject of the accreditation scheme, in the interest of maintaining community confidence in decision making within the planning system. If State level decision makers are to remain exempt, the Council requests that the reasons for the exemption be publicly communicated.

Accreditation of Policy Planners

The new planning system has been established with an emphasis on "getting the policy right" and to reduce conflict at the assessment stage, which has been reflected in new changes such as the removal of third party appeal rights for performance assessed development. It is therefore, considered a significant deficiency of the proposed Scheme that there is no accreditation requirement for policy planners. It is considered that the accreditation of policy planners could be accommodated within the scope of Section 88 of the PDI Act with respect to who the accreditation scheme could apply to. At the higher level of the strategy and policy making, it is considered reasonable and important for the people creating and implementing any designated planning instrument (including the Code) to hold appropriate qualifications and accreditation.

Section 25 of the *Development Act 1993*, requires a council to receive the advice of a person with prescribed qualifications when preparing a Development Plan Amendment. Regulation 86 of the *Development Regulations 2008* provides that the appropriate qualifications include specified membership of Planning Institute of Australia or qualifications deemed appropriate by the Minister. A similar requirement appears in Section 235 of the PDI Act, although it is not clear whether this will apply to the preparation or amendment of a designated instrument, or what the relevant qualifications or accreditation may be. Rather than the requirements of Section 235, the Accredited Professionals Scheme Discussion Paper indicated that a practice direction may be issued to require any person or entity preparing or amending a designated instrument to have received and considered the advice of an accredited planning professional. If the Commission is sincere about this intent, a practice direction is insufficient; instead this should be written into the Act or Regulations. In either case, it is not considered logical for policy planners to sit outside of the accreditation system, if they are required to take the advice of a professional within it.

Auditing and Compliance

Regulations 26 of the draft Scheme requires periodic audits of all accredited professionals, excluding Level 2 planning professionals. Regulation 26(2) goes on to specify that an auditor may or may not be an employee of the State. It is considered that this regulation insufficiently sets out the requirements or parameters of an audit, given their importance in demonstrating the integrity of the Scheme.

To ensure rigour of Regulation 26(4) and (5), a schedule of the regulations should clearly establish a minimum list of mandatory matters and processes which *must* be examined in an audit, rather than allowing the auditing to be undertaken by privately engaged auditors with varying standards. The auditing requirements must include a review of the professional's processing, decision making and CPD requirements. The exception to this would be accredited professionals who do not have a decision making role, in which case only a review of CPD requirements would be necessary. This would ensure consistency, thoroughness and transparency in the process. Regulation 26(6) requires the audits to be undertaken within 5 years after the commencement of the scheme or accreditation of the person. It is considered that 5 years is too long for the first review given the complexities which will be introduced in the new scheme. It is recommended that the first audit be undertaken within the first 2 years and/or after the relevant authority has processed a specified number of decisions.

It is also recommended that the Regulations require (a) prescribed credentials of an auditor, (b) a periodical audit of the auditors by the accreditation authority to ensure consistency and transparency throughout the system and (c) that auditors cannot also be an accredited professional so as to provide a clear distinction between the roles.

The draft Scheme specifies that the responsibility for arranging a periodic audit falls to the accredited professional. Presumably this permits the accredited professional to select which auditor performs the review. To avoid doubt, require transparency, and to avoid accidental oversight on the part of the accredited professional, it is recommended that the accreditation authority be responsible for arranging audits on a sample basis and for selecting the auditor assigned to that professional.

Regulation 26 (13) requires an auditor to report to the accreditation authority any contravention or failure on the part of the accredited professional to comply with the requirements of the Act. It is recommended that this regulation also require this to be reported to the accredited professional's employer (if applicable).

Clarification would be appreciated as to whether an audit of a local government employee who holds an accreditation in their own right, but only operates in a practical sense as a delegate of an Assessment Manager, would include a review of all decisions issued as a delegate or whether these decisions would only be reviewed during an audit of the Assessment Manager.

In the new system, there are several avenues for appeal and challenge including:

- review by a CAP of an Assessment Manager's (or delegate's) decision;
- merit based appeal to the ERD Court;
- judicial review on procedural grounds to the Supreme Court;
- complaint lodged against an Accredited Professional through the Government Accreditation Authority;
- complaint lodged against a member of PIA or AIBS;
- complaint to SA Ombudsman; and
- complaint to Independent Commission Against Corruption (ICAC).

As raised in Councils original submission, further clarification is required as to how the possibility of multiple and concurrent challenges under these processes will be dealt with and the parameters under which the various arbitrators will consider the grounds for a review.

Initial and Ongoing Requirements

Levels of Experience and Competency Requirements

The 'What We Have Heard' report acknowledges that there was a prevailing view in consultation responses that all four planning accreditation levels needed more years' of experience than stated in the Discussion Paper. However, there has not been any increase in the experience requirements in the draft Scheme or justification provided as to why the proposed requirements are considered appropriate in light of these responses. This is a shortfall of the process which offers professionals the opportunity to review and provide considerable time in making submissions, but there is no "line of sight" from the submissions process to the next version of the scheme.

Assuming that the ability for private planners to assess performance assessed developments is removed as per this Council's recommendation, it is again recommended that the experience required for all levels be increased, but particularly for the level of accreditation required for determining deemed-to-satisfy development. Experience has demonstrated that determining the appropriate procedure for current Building Only or Rescode developments is not always straightforward.

There have been numerous occasions where an application has been approved and received from a private certifier on the basis that the development is Building Only or Rescode but a review of heritage listing, zoning, or the specifics of the development by a council officer has determined that the development requires a merit assessment. In a council environment, junior planning officers often process Rescode applications but are under supervision of other more senior staff and have the benefit of clarifying any uncertainties with others in the team. There is a risk that a private planner who is a sole operator with one (1) year of experience will not have the appropriate knowledge, skills or experience to accurately process applications.

As outlined above, an understanding of what types of development will be deemed-to-satisfy would help in determining the appropriate level of experience required to fulfil that role.

It is also recommended that, given the complexity of developments likely to be presented to an assessment panel, that the minimum number of years' experience required for panel members is increased from 2 to 5 years.

Clarification would be appreciated that the years of experience specified for various levels refers to the years that person has been active in their occupation post qualification, and that it does not refer to years of experience within each level individually (particularly for the building professional levels which are more hierarchical) and that it also would not include any significant hiatus in the person's career.

The qualifications, experience and technical skills required by the Chief Executive under Regulation 5, as outlined in the draft Scheme, appear to sit outside of the draft Scheme, rather than prescribed within the Regulations. It is unclear whether amendments to these requirements would require any consultation. However, it is recommended that the Regulations specify a consultation requirement in relation to any amendments to the competency requirements.

Council Assessment Panel Members – Field of experience

Section 83(2)(a) of the PDI Act specifies that current or former members of a council which sit on a Council Assessment Panel do not need to be accredited. This is generally supported given that the role of an Elected Member in this context would primarily be to provide local knowledge and a greater understanding of community expectations than an independent member may be able to provide. However, for the avoidance of doubt, it should be clarified that this applies to a current member of a council relevant to the assessment panel (noting this could be one or more councils if the panel is appointed by a joint planning board). It is not clear, however, why this should apply to a former member of council, particularly as it does not specify for how long, or how long ago, the former member could have been elected. Furthermore, it is considered that Section 83(1)(b)(i) does not explicitly permit a *former* member of a council to be appointed to a panel, other than if they constituted one of the 4 other independent members. If the former member is appointed as an independent member, they should be required to fulfil the necessary criteria for accreditation to demonstrate their qualifications and ability to contribute to the panel.

The draft Scheme places significant emphasis on planning qualifications or experience for assessment panel members. The requirement of at least 6 months experience in at least three of the technical skills could be onerous for a person with a background in an allied field, e.g. engineering or law. It is considered valuable to have panel members with a variety of backgrounds to provide input and consideration from a range of perspectives. Whilst some understanding of the planning system is required, it is recommended that the requirements for assessment panel members is reviewed with further consideration given to the likely experience of allied field members.

[Multiple Accreditations](#)

There is likely to be a number of professionals who would be eligible for, and wish to obtain, accreditation at more than one level. For example, a planning professional who qualifies for Level 1 accreditation and also is a member of a CAP, requiring Level 2 accreditation. It is unclear if this professional would need to obtain both levels of accreditation (presumably paying two sets of registration fees), or if demonstrating requirements sufficient for Level 1 is considered sufficient demonstration of competency to be a member of a CAP.

[Peer Review for Assessment Managers](#)

The need for peer review for Assessment Managers who are existing council employees is unclear. The credentials, experience and aptitude of a job candidate is carefully assessed through the employment process, often including referee checks. It is noted, however, that a peer review process may be valuable for a private planner seeking to be appointed as an assessment manager, as they may not go through the same assessment process.

[Annual Renewal](#)

The 'What We Have Heard' report outlines that consultation responses suggested increasing the renewal period for accreditation however this has not been adopted in the draft Scheme. It is again recommended that the annual renewal period be extended so as to reduce the administrative burden on accredited professionals. This could have particularly onerous administrative implications for councils and similar organisations if multiple staff and Panel members are accredited, particularly if staff and/or Panel members become accredited or join the organisation at different times of year.

[Continuing Professional Development Requirements](#)

Regulation 24 of the draft Scheme provides that the *relevant CPD period* is 12 months. Schedule 1 goes on to prescribe the required CPD points to be obtained within the *relevant CPD period* i.e. 12 months. The Fact Sheets accompanying the draft Scheme indicate that these specified CPD points can be obtained over a 3 year period. Clarification on the CPD requirements and relevant period is requested.

The draft Scheme requires Level 2 planning professionals to obtain 10 CPD points over the relevant period. It is acknowledged that this is half of the requirement of other planning accreditation levels, however it is recommended that the need for any CPD points for a Level 2 planning professional be reviewed. Many CAP members will currently have (or had) an occupation in an allied field such that their membership on the CAP is above and beyond their usual occupation and often outside of office hours. To require the CAP members to attend in the order of 10 hours a year of planning related seminars, workshops etc (typically during office hours) is likely to be onerous, particularly as the CPD content may not be related to their ordinary field of work. These requirements will likely deter some highly qualified and experienced professionals from becoming members of a CAP and feedback has been that as a result, some highly eminent professionals will likely resign from existing Panels.

It is understood that the primary purpose of a CPD system is to ensure that a professional is keeping up to date with a range of information relevant to the profession. An Assessment Manager (who is required to obtain CPD points) is appointed to a Council Assessment Panel and can advise the CAP on procedural, legislative, policy or other assessment matters. The applications determined by the CAP will be processed, assessed and a report prepared by a planner (presumably a delegate of the Assessment Manager) such that all of the facts, history and context are presented to the CAP for their deliberation. In this context, a CPD system is considered to be generally less of a requirement for CAP members as compared to other relevant authorities.

Building Professionals

The Fact Sheet for building professionals indicates that Level 1 Building Surveyors are able to assess Rescode equivalent development applications. In contrast, the *Assessment pathways and accreditation levels in the new planning system* diagram in the two planning professional Fact Sheets illustrate that Building Surveyors will be undertaking Building Rules assessment only, no planning assessments. Notwithstanding the earlier recommendation that decision making powers be attributed to the various relevant authority roles, rather than the accreditation levels, clarification would be appreciated as to the intended assessment scope of building surveyors. If a Level 1 building professional is to be given powers to determine Rescode equivalent development, there should be some demonstration through the accreditation process that the professional has planning related experience, and some CPD requirements relating to planning. Otherwise, there is no specific requirement for the professional to have an understanding of planning terminology, definitions, case law etc, all of which is required to process Rescode development.

Accreditation of Council Building Officers

It has been communicated by DPTI staff that any building professional issuing consents will need to be accredited under the new Scheme. However, it is unclear where this is specified in the PDI Act given that councils will remain a relevant authority for the purposes of Building Rules assessment and presumably can delegate to staff. Clarification regarding the need for accreditation for issuing consents, as well as undertaking other functions such as inspection and enforcements, is required.

Renewal Requirements

Under the existing AIBS accreditation scheme, a building professional must demonstrate competency/experience in the requirements of each level before they can be appointed to that level. For example, a Building Surveyor Limited would need to assess a building over three storeys high, under the supervision of a Building Surveyor in order to be elevated to Building Surveyor. It is understood that there are no ongoing requirements to demonstrate that the professional regularly assesses buildings over three storeys high. It is not common for council building officers to have the opportunity to assess development of this scale, as many of these types of applications are typically submitted to private certifiers. It is considered that the CPD requirements satisfactorily keep building professionals 'up to date' with any changes or developments in building related policy and legislation. Clarification would be appreciated that this will continue to be the case under the new scheme.

Authorisations and Identifications

Regulation 33 provides that the accreditation authority *may* issue identity cards to accredited professionals. It is not clear why the term *may* has been used rather than *should* or *must*, unless it is intended that an ID card is only issued to specified accreditation levels or roles. For example, an ID card is not considered necessary for assessment panel members and/or private planning professionals. It is recommended that the wording be changed to *should* or *must*, or clarification be provided as to who this is intended to apply to.

Clarification would be appreciated as to whether any powers of inspection are intended to apply to private professionals. Currently, Section 18 of the *Development Act 1993* permits the Minister or a council to appoint authorised officers and Section 19 gives authorised officers powers to enter and inspect land and obtain information. These powers are carried over in Sections 210 and 211 of the PDI Act, however it is not clear if there is an intention for private professionals to be given the same powers for the purposes of assessing applications.

ePlanning Portal

DPTI staff have indicated that log on authorisation for the ePlanning Portal may be limited to relevant authorities. Whilst this is understood for the purposes of security and accountability, this is likely to cause difficulties for organisations such as councils. Firstly, administrative work undertaken by planning assistants (such as uploading or downloading plans, consents and other documentation; responding to notifications; updating tracking actions etc) is likely to require access to the ePlanning Portal. This may be even more so for CAP determinations given the CAP members themselves are unlikely to directly interact with the Portal. The nature of work undertaken by planning assistants varies

across councils, but for example at the City of Norwood Payneham & St Peters, interactions with EDALA are almost exclusively managed by planning assistants.

Secondly, an Assessment Manager is likely to have several delegates. Is it intended that all of these delegates share the log on details of the Assessment Manager? Not only would this be confusing and could lead to clashes when access is required by different officers, but it could be difficult to determine what actions were undertaken by the Assessment Manager personally and what actions were undertaken by a delegate, should that ever need to be determined for legal, procedural or record keeping purposes. It is recommended that this be carefully considered when formulating the ePlanning Portal.

Thank you again for the opportunity to provide comment on the Accredited Professionals Scheme Draft. As set out in this letter, there are a number of significant concerns, particularly regarding the confused role of accreditation as opposed to relevant authorities, and concern regarding the proposed activities of private professionals. The Council trusts that these issues will be seriously and genuinely considered in reviewing the Accredited Professionals Scheme.

Should any meaningful changes be made to the Scheme as currently drafted, further consultation should be undertaken. There is also a need for better communication in outlining what changes are or are not made to the draft Scheme and why.

Should you have any questions regarding the comments raised in this submission or require further information, please contact Eleanor Walters on [REDACTED] or [REDACTED] or Emily Crook on [REDACTED] or [REDACTED]

Yours sincerely



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