



## Clarence City Council

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Mr Michael Edrich  
Senior Policy Officer  
Local Government Association of Tasmania

Dear Mr Edrich

### **Options Paper - No Planning Approval Required Certificates– Feedback for CBOS**

Thank you for your email dated 20 January 2021 attaching the Options Paper regarding “No Planning Approval Required Certificates”. We support the overarching intent of the proposals to reduce re-tape and to facilitate a more efficient and timely approach to dealing with planning outcomes.

At officer level, there are some significant reservations regarding the legal framework of the proposed options. We consider that the most appropriate mechanism for resolving the relevant issue would be pursuant to the *Land Use Planning and Approvals Act 1993* (Tas) rather than the *Building Act 2016* (Tas) or the *Occupational Licensing Act 2005* (Tas).

#### Option 1

Option 1 proposes that the Director of Building Control issue a Determination under the *Building Act 2016* (Tas) which would allow private planning consultants to issue “No Planning Permit Required” Certificates, which can then be relied upon by the Building Surveyor and Permit Authority when determining an application for building approval.

Option 1 is not within the intent of the remit of power provided to the Director of Building Control under the *Building Act 2016* (Tas). The *Building Act 2016* (Tas) provides for regulatory controls of building work, it does not provide for regulatory controls of planning matters. As a matter of legislative interpretation, the powers of the Director of Building Control must be considered in this context.

As such, despite the broad drafting of regulation 8(f) of the *Building Act 2016* (Tas) and the fact that the building surveyor must consider all relevant permits under any Act, any such power conferred upon the Director of Building Control does not appear to extend to regulating planning matters and to consider otherwise would be a strained interpretation.

## Option 2

Option 2 proposes that Option 1 be extended such that there is also a requirement that private planning consultants be licensed to issue a statement or report that no planning approval is required. The proposal is for the Administrator of Occupational Licensing to amend the Administrator's Occupational Licensing (Building Services Work) Determination pursuant to the *Occupational Licensing Act 2005* (Tas).

For reasons similar to as outlined in Option 1 above, Option 2 is at best only tenuously within the intent and remit of power provided to the Administrator of Occupational Licensing under the *Occupational Licensing Act 2005* (Tas).

We note that:

1. The *Occupational Licensing Act 2005* (Tas) pursuant to section 7(1BA) and Schedule 2, Part 4 sets out the application of the Act to certain occupations involved in "building services work". It applies to the assessment and certification of "buildings" and "building work" and authorisations and approvals to perform building work.
2. Within the *Occupational Licensing (Building Services Work) Regulations 2016* (Tas), Schedule 1, Part 1, Item 3, "building services work" is defined as including assessment and certification of proposed "building work" and including statutory approvals and authorisations "to perform that building...work", and certification of "building work" and "buildings".
3. Pursuant to section 3(2) of the *Occupational Licensing Act 2005* (Tas), terms such as "building" and "building work" import the meaning as defined within the *Building Act 2016* (Tas).

As a matter of legislative interpretation, the focus of the above is on structures at the building stage within the meaning of the *Building Act 2016* (Tas) rather than at the planning stage within the meaning of the *Land Use Planning and Approvals Act 1993* (Tas). The *Occupational Licensing Act 2005* (Tas) clearly operates to support the *Building Act 2016* (Tas).

The *Occupational Licensing Act 2005* (Tas) refers to the *Building Act 2016* (Tas) and the *Building Act 2000* (Tas) over 50 times, whereas it refers to the *Land Use Planning and Approvals Act 1993* (Tas) on nil occasions. The planning occupation is never identified within the *Occupational Licensing Act 2005* (Tas) expressly, or in our view impliedly.

The Tasmanian planning and building regulatory framework operate as two very distinct and separate legislative domains (ie. the *Building Act 2016* (Tas) and the *Land Use Planning and Approvals Act 1993* (Tas)). The proposal unnecessarily blurs these boundaries.

### Option 3

Option 3 proposes that the status quo remain. As a result of the above, council officers support the status quo. There is nothing preventing a private planning consultant from providing an opinion that a planning permit is not required for a proposed development. From a legal perspective, if a building surveyor were to rely on such an opinion, we consider that section 326(1) and section 326(2)(c) of the *Building Act 2016* (Tas) provides immunity.

### Summary

In summary we support the intent of the proposals, but due to concerns regarding the legal framework, we are unable to support Option 1 or Option 2. Of the options presented we support Option 3 only and consider that the existing immunity under the *Building Act 2016* (Tas) protects building surveyors.

The functional issue which therefore remains, is whether private planning consultants are prepared to put in writing, an opinion that no planning permit is required, and whether consumers are adequately protected. The most appropriate approach to dealing with such issues appears to us to be pursuant to the legal framework of the planning legislation.

Yours sincerely



Clare Shea  
**MANAGER GOVERNANCE**