

3 March 2021

Department of Justice
Office of the Secretary
haveyoursay@justice.tas.gov.au

Dear Sir/Madam,

No Planning Approval Required Certificates – Options Paper

Thank you for the opportunity to provide a submission the abovementioned Options Paper and particularly to Peter Graham for providing a briefing for our Members.

The Planning Institute of Australia, Tasmanian Division, (PIA) is the body representing the planning industry in Tasmania. We support the need for robust assessment and approval process as part of a well-functioning planning system. PIA (Tas) supports reforms that improve planning processes and outcomes, particularly where planners with appropriate qualifications and experience make decisions on planning matters.

A private certification process for selected low risk projects aligns with the need for competent assessments within the principles of coherent planning systems, as advocated by the Institute. Experience from other jurisdictions identifies that private certification can offer improvements in determination of planning assessments. We recommend such reforms are completed in accordance with the principles signed off by the Planning Ministers of the Commonwealth, State and Territory Governments in response to the recent COVID-19 crisis. Relevantly, those principles provide the following guidance:

- Decision making in the public interest is a paramount theme in all planning systems and this must continue as a guiding consideration.
- Transparency for stakeholders about changes to systems and particular decisions.
- Decisions made within jurisdictions are consistent, where possible.
- Consideration of the level of public interest in a particular planning change or development proposal.
- Balancing administrative and legal review rights with the need to address the pandemic emergency and to assist community and economic recovery.

We are concerned options 1 and 2 are not consistent with these principles or the stated aims of the project.

While we appreciate the political imperatives for this reform, we note that this proposal was limited to existing mechanisms available to the Director of Building and did not extend to any statutory or legislative reforms. We suggest that the poor identification of the problem and lack of supporting analysis makes it difficult to evaluate whether the options provide the best solution.

Our consultation identified a general interest amongst consultants for private certification, however there was very little support for the current proposal.

1. Consequential issues

Should this reform proceed, it will deliver an ongoing legacy to the planning system and Tasmanians across a range of interest groups. Any reform must therefore ensure that it does not undermine the quality of determinations and confidence in the planning system.

The No Permit Required status under Interim and the Tasmanian Planning Schemes applies to a wide range of use and development. The NPR process is likely to primarily relate to residential development. The greatest percentage of applicants proposing residential development are not those who can afford to pay for a consultant to provide a service that a Council may provide for a far lower cost. The private certification may consequently only serve the interests of the few, with little benefit for the broader community.

We suggest this requires further examination to ensure that this intervention deals with the problem without creating unintended or adverse outcomes.

No information is provided on how the public interest is addressed following the certifications, and subsequent processes that the public utilise for querying the nature and compliance with a consent.

Recommendation:

- Work be completed to refine the specific uses and developments that private certification be applied to, particularly on high volume uses and developments.
- Should option 2 be pursued, the Scope of Work be limited to specific, zones, uses and development under the determination.

2. Licensing and Oversight

Noting the lack of support, Option 2 is considered far superior to Option 1. Certifiers must possess and maintain critical skills and protections for end users of the system.

Option 2 allows CBOS to establish requirements for accreditation of certifiers, insurance requirements, minimum qualifications, and experience. To that end, the draft qualifications included as Appendix 2 of the Options Paper are considered a minimum.

We consider further work is required on the experience requirements and suggest that a minimum period of post graduate practice and experience in the role and functions of the Planning Authority under the *Land Use Planning and Approvals Act 1993* are essential requirements.

It is critical that private certification models include rigorous government oversight to ensure certifiers are performing their roles competently and consistently. The need for rigorous oversight (including routine auditing) is a major consideration and cannot be underestimated, yet the Options Paper is silent on this issue. Experience from other industries highlights the need for this reform to maintain confidence in the planning system and the determinations this reform would allow.

If private certification of NPR status proceeds, the State must carry the obligation to regulate, audit and enforce licensing requirements, consistent with other professions.

We note that PIA members are bound by the PIA Code of Conduct, which establishes standards for professional conduct and provides for enforcement of complaints. PIA provides its own conduct and review process within Tasmania and across Australia for the professional standards of its members.

Recommendation:

- Option 3 is preferred; however, Option 2 is better if this proposal must proceed.
- The State must provide processes for licensing, regulation, auditing, and enforcement of certifiers.
- Further discussion occurs with PIA on the relevant skills and experience for licencing of certifiers.
- Consultation and education be provided to the planning profession on how this would occur, consistent with other industries.

3. Duplication of process

We expect that assessments are likely to be duplicated within Council, as a routine

practice resulting from the statutory obligation of the planning authority to ensure compliance with the relevant planning scheme. This will foreseeably undermine the key objective of the proposal, which is to improve efficiency.

If the reform proceeds, we recommend that NPR certifications be subject to mandatory documentation requirements, such as approved forms under the *Building Act 2016*, to assist with review of decisions after the fact. We also recommend that these forms must be provided to the planning authority and CBOS as part of the assessment process.

Recommendation:

- Any process includes mandatory documentation of the assessment against the relevant planning scheme.
- Those documents must be provided to the relevant planning authority and CBOS as part of the certification process.

4. Access to information for assessment and application of codes

We are concerned that access to information required for NPR certifications may not be equitable during the assessment and following certification.

Both local government and consultant planners will have access to information that affects the determination of NPR status. Information can be subject to corporate limitations across a range of issues such as contamination, geotechnical, natural values, and flooding. In addition, many codes under current and future planning schemes rely on information requests under section 54 of the *Land Use Planning and Approvals Act 1993* to determine applicability.

This situation creates a conflict between the private certifier and the statutory obligations of the planning authority to apply and enforce compliance with its planning scheme that is not addressed in options 1 or 2.

As noted, the planning authority will still carry the liability associated with ensuring compliance with their planning scheme and enforcement in such cases.

Recommendation:

- Further work be completed to ensure suitable information is available for certifiers to determine compliance with planning schemes.
- The information used for certifications is available for future reviews of determinations.
- Further work is completed to identify and address the expected conflicts between private certifications and the statutory obligations of the planning authority.

5. Dispute resolution

As noted elsewhere in this response, the lack of consistent information to support assessments and conflicts with the statutory obligations of the Planning Authorities are expected to result in disputes from assessments. This is not addressed in the Paper.

Given that the statutory obligations on the planning authority are not altered by this reform, this area needs further attention to resolve expected problems.

Recommendation:

- that further work is completed to identify and address the expected conflicts between private certifications and the statutory obligations of the planning authority; and
- a process be established to address disputes in assessment.

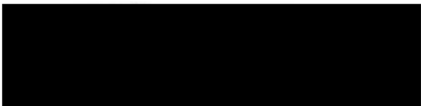
Summary

PIA (Tas) supports reforms to planning processes that deliver improvements, maintain the integrity of the planning system, and build confidence in decisions made within the planning system. We note that private certification of low-risk projects can deliver positive outcomes to the planning process, as demonstrated in other States.

Noting these comments and our concerns, PIA (Tas) supports option 3 in the current proposal. We are concerned that options 1 and 2 will not deliver the stated objectives of the proposal and are likely to result in increased costs, duplication of process and will create unnecessary and unresolved conflict between certifications and the statutory obligations of planning authorities.

We thank you for the opportunity to make this submission and are keen to discuss how our concerns can be addressed. If the Department of Justice would like to discuss this matter further with PIA, please contact me.

Yours sincerely



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Tasmanian Division