

No Planning Approval Required Certificates

Background

The Tasmanian Government is committed to cutting red tape and has been in a process of red-tape reduction since 2015.

In June and December 2020 respectively, the Tasmanian Government passed two Building and Construction (Regulatory Reform Amendments) Bills. The first Bill introduced a range of regulatory reforms to tighten up the permit and approval processes within local government, TasWater and TasNetworks. The second Bill introduced similar reforms focused on accountability of State Government agencies in the permit and approval processes.

In addition to legislative change, some non-legislative reforms were identified that would tighten up permit and approval processes, that could be made by Determinations or policy changes, rather than by introducing new laws.

One such non-legislative reform was for ‘No Permit Required Certificates’.

This reform was proposed in the Premier’s Economic and Social and Recovery Advisory Council (PESRAC) Interim Report¹ in July 2020. The Interim Report provides an overview of the economic and social impacts of COVID-19 and outlines the Council’s recommendations with regard to the recovery journey and its immediate priorities.

Recommendation 26 of the PESRAC Report stated:

The State Government should change the regulatory framework for developments that fall within ‘no permit required’ and ‘permitted use’ under planning schemes to deliver an efficient and timely approach for dealing with planning outcomes.

Initial consultation with the Local Government Association of Tasmania (LGAT) proposed that the Director of Building Control consider issuing a Determination under the *Building Act 2016* which would allow private planning consultants to issue ‘No Planning Permit Required’ Certificates, which

¹ https://www.pesrac.tas.gov.au/_data/assets/pdf_file/0016/250441/Interim_Report.pdf

can then be relied upon by the Building Surveyor and Permit Authority when determining an application for building approval.

This paper outlines two options which may facilitate this proposed change and is to form the basis of further discussions with relevant stakeholders including Councils, Building Surveyors, Builders and Planning Consultants.

What is the issue?

There are a number of developments that may occur in Tasmania which do not require planning approval, including residential buildings in residential zones provided that the proposed buildings comply with the relevant planning provisions in the applicable planning scheme. This includes developments that are 'exempt' from the requirements in the planning scheme, or those classified as 'No Permit Required' in the planning scheme.

Currently, building surveyors, builders and permit authorities may request that an owner, or their agent, confirm that either planning approval has been granted, or that planning approval is not required. In order to provide the requested confirmation that no planning approval is required, the owner, or developer, is currently required to make a request to the planning authority at the relevant council. This request for confirmation, that no planning approval is required, can often lead to a significant delay due to planning resource constraints within councils, meaning work cannot progress.

Why is a change proposed?

The PESRAC Interim Report makes it clear that, with substantial stimulus measures from both State and Commonwealth Governments, short and medium-term building and infrastructure projects will be critical to economic activity and job creation. This is not solely a benefit as we rebuild and recover after the COVID-19 Pandemic, but also reduces unnecessary delay in development in the long term.

Blockages in the approval processes should be resolved through alternative arrangements to facilitate development and it is to this end that the options are provided below.

What are the options?

Option I. Amend the Director's Determination – Certificates by Qualified Persons for an assessable item to include certificates of No Planning Approval Required issued by Private Planning Consultants

Under the *Building Act 2016*, the Director of Building Control can issue a Determination that specifies the expertise and qualifications required for a person to provide a certificate for an

assessable item. A certificate issued by that person can then be relied upon by an authorised person as evidence that the assessable item complies with the Act.

This allows for independent advice or an assessment to be given by a specialist or expert on a requirement under the Building Act that another party, such as a Permit Authority or Building Surveyor can rely upon. Examples include soil testing reports, bushfire-prone area assessments, energy efficiency ratings, or an assessment of a component of a plumbing system.

This option proposes that the Director of Building Control amend the Determination to include Private Planning Consultants and allow for these persons to assess the planning requirements for a proposed development, and if appropriate to do so, issue a report or statement that certifies that the work does not require planning approval.

The statement or report of No Planning Approval Required would be accompanied by a Certificate of Qualified Person – Assessable Item (Form 55). It may then be relied upon by the approval provider (building surveyor or permit authority) and the person relying on this certification is given a degree of legal immunity, as provided under pt 21 div 5 of the *Building Act 2016*.

The certificate type provided by the Private Planning Consultant is to be restricted solely to providing a planning assessment that determines that no planning approval is required. This would not prohibit local councils from continuing to provide advice on whether or not a planning permit is required, and does not remove the local council from their statutory functions as planning authority.

For this option, the Determination will also specify requirements of the Private Planning Consultants, such as minimum qualifications and a requirement to hold Public Indemnity insurance. An example of this concept is provided, in preliminary draft form, at Appendix I.

Benefits

- Will result in Private Planning Consultants being able to issue a report or statement that no planning approval is required.
- Will result in more efficient and timely confirmation that no planning approval is required, resulting in quicker building work commencements.
- Reduces burden on council planning authorities to assess proposed works which do not require planning approval
- Frees resources at local council to focus on assessing development applications which do require planning consent
- Provides certainty for building approval providers, such as building surveyors and permit authorities, that no planning consent is required.
- Can specify minimum insurance, qualifications and experience required of Private Planning Consultants who may provide certificate.

Considerations

- Lack of certainty that the planning consultant holds qualifications they purport to have, due to a lack of a requirement to hold a licence from CBOS
- If a licence is not required, the State Government cannot revoke the licence of a private planning consultant if they have demonstrated lack of sufficient competency which may present a risk to consumers
- Perception that Private Planning Consultants can undertake the duties of a local council planning authority

Option 2. Adopt Option I and require the Private Planning Consultants to hold a building services provider licence under the Occupational Licensing Act 2005.

Option 2 would extend the first option and introduce a requirement that private planning consultants be licensed to issue a statement or report that no planning approval is required.

This option would involve:

- Updating the Director's Determination to include a statement of a Private Planning Consultant as an assessable item (Option I); and
- Requiring that a Private Planning Consultant be licensed under the *Occupational Licensing Act 2005* for the purpose of certifying planning work as not requiring planning approval.

To achieve the licensing requirements, the Administrator of Occupational Licensing may amend the [Administrator's Occupational Licensing \(Building Services Work\) Determination](#) to include a class of licence of Private Planning Consultant. This new class of licence would specify the requirements for insurance, qualifications and experience, and will also determine the scope for the licensed persons.

The *Occupational Licensing Act 2005* applies to the occupation, trade or calling that is the performance of building services work as described in Part 4 of Schedule 2 of the Act. This includes the assessment and certification of premises, buildings and building work.

Section 30 of the *Occupational Licensing Act 2005* provides that, for the purposes of issuing licences or permits under this Act, the Administrator may determine that –

- (a) any prescribed work is to be divided into classes of prescribed work; and
- (b) any class of prescribed work may be combined with any other class of prescribed work.

The *Occupational Licensing (Building Services Work) Regulations 2016* defines Prescribed Work as work included at Part 1 of Schedule 1 of these Regulations, which includes:

3. Assessment or certification work that is –

- (a) assessment and certification of architectural or engineering designs of proposed building work, or demolition work, including work performed for the purpose of obtaining statutory approvals, permits or authorisations to perform that building or demolition work; or
...
- (c) inspection, assessment, testing, reporting, advising, authorisation or certification of building work, premises, buildings or temporary structures; or
...

So, given the above, Planning Consultancy, for the purposes of assessment and certification that proposed work does not require planning approval, may be covered under the *Occupational Licensing Act 2005*.

A draft initial concept for a licence provided by an amendment to the Administrator's Determination is included at Appendix 2 to this options paper.

Benefits:

- Will result in Private Planning Consultants being able to issue a certificate stating No Planning Approval Required.
- Can specify minimum insurance, qualifications and experience required of Private Planning Consultants who may provide the certificate.
- Provides additional certainty to approval providers that planning consultant is suitably qualified and experienced.
- Will result in more efficient and timely confirmation that No Planning Approval is Required, resulting in quicker building work commencements.
- Reduces burden on council planning authorities to assess proposed works which do not require planning approval.
- Frees resources at local council to focus on assessing development applications which do require planning consent.
- Provides certainty for building approval providers, such as building surveyors and permit authorities that no planning consent is required.
- Provides the ability for the Administrator of Occupational Licensing to revoke, or refuse to renew, the licence of a private planning consultant if the person has demonstrated a lack of sufficient competency or professional conduct.

Considerations:

- Additional cost (licensing) to private planning consultants
- Additional regulatory burden to private planning consultants
- Without supporting documentation (Fact Sheet/Guidelines) intent may not be well understood.

Option 3 Status Quo

Option 3 would retain the current process of an applicant needing to make contact with the local council planning authority to request confirmation that planning approval is not required for any proposed development or change of use. The process for this confirmation varies between councils and can be impacted by resource availability in councils which can prevent responses being provided in a timely manner.

Benefits

- No additional regulatory material for approval providers to comprehend.
- No additional costs to owner/developer (other than costs resulting from delayed commencement of work)

Considerations

- Will not provide an alternative option for an owner/developer to obtain a No Planning Approval Required certificate to satisfy an approval provider, meaning owners remain bound to council timelines.
- Does not result in the facilitation of recommendation 26 of the PESRAC Interim Report.
- Does not implement preferred options as discussed with State Government and LGAT.
- Does not free resources at council to commit to assessing and determining development applications which do require consideration for permit.
- Does not alleviate potential regulatory blockages, as described in the PESRAC interim report.

Will this allow a Private Planner to grant Planning Approval?

No, the ability to issue planning approvals for works that require consent under the *Land Use Planning and Approvals Act 1993* will remain the responsibility of the planning authority, being the local council. The options proposed in this paper only relate to proposed development or change of use where the work is determined to be ‘exempt’ or ‘No Permit Required’ under the relevant planning schemes.

Will council planning authorities require a licence?

No, the proposed options do not set any requirements on planning authorities within local government. The Planning Authority at council may continue to confirm that work is ‘exempt’ or ‘no permit required’.

What now?

The Tasmanian Government is seeking feedback in respect of the potential regulatory impact that may be associated with the proposed options. Below are some brief points to focus the discussion, however Consumer, Building and Occupational Services (CBOS) welcome feedback on any points relating to this options paper.

Discussion Points

Do you have a preferred option listed above? Why?

Does Part 21 Division 5 of the *Building Act 2016* provide sufficient immunity from liability for approval providers (building surveyors & permit authorities)?

Does a requirement for the Private Planning Consultant to hold a licence provide any additional clarity to approval providers?

Do you agree with the positive and negative aspects of the options?

Do you believe that any of the proposed options will result in a reduction of regulatory roadblocks?

Are there any other likely impacts associated with implementing any of the proposed options?

How do I submit feedback?

This options paper is provided on the Department of Justice [Community Consultations](#) website.

All written submissions on the options paper must be received by 5:00pm on 26 February 2021.

Email your submission to haveyoursay@justice.tas.gov.au

Other than indicated below, submissions will be treated as **public information** and will be published on our website at www.justice.tas.gov.au/community-consultation. Submissions will be published after the consultation period.

No personal information other than an individual's name or the organisation making a submission will be published.

For further information, please contact: CBOS.info@justice.tas.gov.au and include 'Attention: Policy & Projects – No Planning Approval Required' in the email subject.

Accessibility of Submissions

The Government recognises that not all individuals or groups are equally placed to access and understand information. We are therefore committed to ensuring Government information is accessible and easily understood by people with diverse communication needs

Where possible, please consider typing your submission in plain English and providing it in a format such as Microsoft Word or equivalent.

The Government cannot however take responsibility for the accessibility of documents provided by third parties.

Important Information to Note

Your name (or the name of the organisation) will be published unless you request otherwise.

In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), the Department will treat the submission as public.

If you would like your submission treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission clearly identifying the parts of your submission you want to remain confidential and the reasons why. In this case, your submission will not be published to the extent of that request.

Copyright in submissions remains with the author(s), not with the Tasmanian Government.

The Department will not publish, in whole or in part, submissions containing defamatory or offensive material. If your submission includes information that could enable the identification of other individuals then either all or parts of the submission will not be published.

The Right to Information Act 2009 and confidentiality

Information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish all or part of your submission to be treated as confidential, your statement detailing the reasons may be taken into account in determining whether or not to release the information in the event of an RTI application for assessed disclosure. You may also be contacted to provide any further comment.

Appendix I.

Draft Concept for amendment to Assessable Items Determination

Certificate Type	Given by	Qualifications	Specialty Area
Planning Assessment – No Planning Approval Required	Private Planning Consultant	<ol style="list-style-type: none">I. Membership with the Planning Institute of Australia; or2. Completion of a degree recognised as an Accredited Course by the Planning Institute of Australia. <p>Professional Indemnity Insurance</p>	Land Use Planning matters.

Appendix 2.

Draft Concept for amendment to Building Services Provider Determination

Category	Planning Consultant (building services provider)
Classes	N/A
Scope of work: (Standard requirements)	The licence allows the holder to assess and certify proposed building or demolition work against relevant planning legislation and provide, if appropriate to do so, a statement of 'No Planning Approval Required'. The relevant building surveyor and/or permit authority may then rely on this certification from the Planning Consultant when taking into account consents or permits required under the <i>Land Use Planning Approvals Act 1993</i> .
Licence restrictions/ conditions applicable	For the avoidance of doubt; Planning Consultants, licensed as building services providers under the <i>Occupational Licensing Act 2005</i> , are restricted to provide solely the statement of No Planning Approval Required, and are not permitted to perform the functions of the Planning Authority under the <i>Land Use Planning and Approvals Act 1993</i> .
<i>Minimum requirements for new application requirements for this Class</i>	
Minimum qualifications completed (all new applicants)	Membership with the Planning Institute of Australia; or Completion of a degree recognised as an Accredited Course by the Planning Institute of Australia; or An appropriate degree (AQF 7 or higher) in Planning, submitted to the satisfaction of the Administrator.
Experience	<ul style="list-style-type: none"> • Five years' experience as a planner
Insurance	<ul style="list-style-type: none"> • Professional Indemnity as per Part 9 of the Determination
Licence application fee	<ul style="list-style-type: none"> • An applicant is to pay the fee(s) as prescribed in the regulations made under the Act
<i>Obligations of every licensee after a licence has been granted:</i>	
Continuing Professional Development	<ul style="list-style-type: none"> • XX points minimum per year; <ul style="list-style-type: none"> ○ refer to CPD scheme in Part 8 for details
Code of Practice	<ul style="list-style-type: none"> • To observe or apply the relevant Codes <ul style="list-style-type: none"> ○ Reference applicable Codes in Parts 10 and 11 for details
Licence Fees (Ongoing)	<ul style="list-style-type: none"> • To be paid at the prescribed rate as per the regulations
Insurance (Ongoing)	<ul style="list-style-type: none"> • Professional Indemnity as per Part 9 of the Determination

Department of Justice
Consumer, Building and Occupational Services
Phone: 1300 654 499
Email: CBOS.Info@justice.tas.gov.au
www.cbos.tas.gov.au