



**Prospect Residents
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Registered No. 12864M

RECEIVED

17 Oct 2018

DPTI

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18/9/2018

The Prospect Residents Association has chosen to comment on both the **Accredited Professionals Scheme Draft** and the **Assessment pathways How will they work** in one submission as the issues cross over both documents and some comments under one paper also apply to the other.

The association wishes to thank you for the opportunity to comment on these documents.

ACCREDITED PROFESSIONALS SCHEME DRAFT

Planning, Development and Infrastructure (Accredited Professionals) Regulations 2018

It is very difficult to comment on a new system that is coming out in a piece meal way and it is not clear how it all fits together.

There are several big problems with all the documents currently under public consultation by DPTI. The first is that there is no clarification immediately obvious to the community, who want to comment on these documents, on where they fit in an overall planning process. So when we met with the staff from DPTI who kindly went through some of the points about the accredited professional scheme we were informed that this consultation is only about accreditation of private certifiers and not about how the scheme will run. This was not at all clear from your website or from the consultation documents and you need to improve your consultation processes by including the context of all documents and visual summary documentation on how the system will work and fit together ie what are the components of the system and which part is being consulted on at any one time. This document raises many unanswered questions regarding how the private certifier system will work.

The second problem relates to Minister Rau (and presumably this being continued by Minister Knoll) stating that by involving the community up front in the development of policy and processes and plans that the system will work so well that the community will never need to comment on anything being built in their neighbourhood. However what we are finding is that many parts of the planning system are quite technical and our submissions are readily dismissed and the majority of the consultation is occurring with the planning professionals.



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Thus the community is simply removed from having any real say in the planning system in any way at any time. There will be many conflicts coming out of this way of doing business.

The majority of people own only one asset and that is their home or they can only rent and they have no say at all about what the places they rent will look like and how they will function. So the whole system gives developers and builders significant power to build what they like and make big profits with little concern about the impact on the community and what they transform communities into.

It is important to differentiate between building approvals and planning approvals and make it absolutely clear to the community what decisions each person can make and who can make them. At present the system is extremely confusing and almost impossible for the community to navigate. Simple easy to understand documents need to be developed to guide the community on who makes what decisions with minimal jargon.

Many of the community's concerns are about poor planning decisions resulting in poorly designed, inappropriate developments occurring in urban infill areas. These concerns hopefully will be addressed by the new Design Code specifying development which will maintain and even enhance the existing amenity of neighbourhoods, set out by the Good Design Principles, and which must be used by trained planners. However there is little confidence that one design code will successfully replace all the individual council development plans, (put together to take into consideration differences in neighbourhoods), and will work.

Two other significant community concerns are about transparency and independence of decisions made by private certifiers. There is a perception that certifiers are under pressure from developers to approve the building of developments which impact negatively on existing amenity and character. The certifiers can use a variety of techniques such as payment into a "carparking fund", or declaring it a "merit based" development", or arguing the proposal is "not at significant variance" from the Development Plan to certify second rate building. Councils are forced into a similar position by the way the planning system is now put together.

Regarding independence, the planning system needs to ensure that certifiers are indeed independent from the developments they are assessing. By way of analogy, in a court case, the plaintiff cannot choose the judge ruling on their case. Legal decisions are reached on law, and judges are required to be independent of the parties involved, and impartial with respect to any personal bias about the case. So the notion of choosing the certifier is problematic and needs clarifying.



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Who – the council, the developer- chooses whether the certifier is a public or private professional? What is the difference between the two? How will this result in more “responsive times”? If this is because there are professionals in the pool, it makes sense. If it is because some certifiers are chosen more often, why would this be – this would lead to a complete lack of public confidence. Often the reason for delay results from people wanting to not follow whatever the rules are and in these cases the people who are blamed are not those who are wanting to break the rules but those who are trying to stop this happening.

Until these questions are answered in a way that precludes individual entities choosing a particular certifier, so that bias cannot be involved, the system has doubts cast over whether they are just processes.

Improved management of complaints and investigations is vitally important – however, again, until this scheme is supported by specific detail, which reassures the community of their transparency and independence, there is lingering mistrust because of council and government processes in the past.

Lastly, to enhance transparency, and therefore public confidence in the new planning system, we as a community need to be able to access information about planning systems, like knowing about the residential code, and where to access it and about the details of all the new schemes being devised. This will enable us to know how to effectively challenge decisions, or lobby government to change its laws and rules to better balance community needs and private profit demands.

More specifically in relation to certification the following comments are made:

If certain training is required then it should be required no matter of a persons circumstances eg pregnancy.

Training must be other than online training as online is too open to cheating.

There is significant concern that certifiers will have up to 5 years to be audited. This is considered to be far too long as significant corruption can occur in a 5 year time period and this needs to be shortened to 3 years. South Australia needs to make sure we do not go down the path of New South Wales where there are many certifiers up on corruption changes.



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A degree and one years experience is far too short for a certifier to be making Level 4 Deemed to Satisfy development approval decisions. This should be minimum 2 years experience. The other periods of experience for levels 1-3 should be reviewed in light of this.

Who will be the auditors and who will keep the register for private certifiers? Will this be the Department for Consumer and Business Affairs or Councils and who will pay for it?

Should certifiers be paid up front to avoid developers and builders pressuring them to sign off before works are completed? But then what happens if the certifiers load is greater than what he or she estimated resulting in them losing money and what does that do to the decision making outcomes and can the certifier then pull out of the work or charge additional fees. Problems will be difficult to resolve if a builder is not doing the right thing by his build and there is a certifier involved.

In NSW some certifiers drop their fees to attract work. This results in them then not fully meeting their obligations and poorer outcomes for consumers. Low cost strategies can result in cutting corners. Should there be a minimal fee that certifiers can charge to avoid this occurring?

Will private certifiers be considered public officials under the ICAC system and public authorities under the Ombudsmans Act? We think they should be subjected to both these Acts

How will public certifiers be allocated or appointed to avoid conflicts of interest and corruption as is occurring in NSW? We would support a rotational system where a developer/builder is given a specified number of randomly selected certifiers to choose from a designated pool for areas. This would require both parties to be able to decline under certain circumstances and requires further development.

It is unclear who will be making what decisions between private certifiers and councils but there is concern that there is accountability in the council system with planners reporting to managers but no accountability with private certifiers who are accountable to no one but themselves. Our view is that there is a far greater risk of conflicts of interest arising with private certifiers compared to council certifiers.

We are concerned that our council areas do not have expanded residential code areas as this is significantly already contributing to loss of character in Prospect where beach house type



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developments or long skinny single or two storey boxes are being built amongst attractive bungalow dwellings.

Additional comments

- It would have been helpful to have page numbers on the document.
- Under interpretation CPD needs to be spelled out. It was not clear until half way through the document what this acronym meant. To us CPD could stand for Child Protection Department
- 18(5) Why is this the case?
- How do you police 20(2)(f)?
- 23 Register (2) This needs to include the CPD training undertaken.
- **CPD training** Either people are required to be trained or not! People should not be able to do the work if they have not undergone the required training.
 - **24(3)** If CPD is required
 - **24(3)(b)** Should be mandatory.
- What do prescribed and derogate mean in 25(3)?
- 26(2) Council planners should be the auditors. 5 years is too long to wait for auditing. It should be at the most 3 years if not 2 years. A lot of bad decisions can be made in 5 years and bad decisions often cannot be undone so it is important that systems make sure these are minimized.
- 26(11) Should have added a review of complaints received.
- 26(6)(a) What does this mean?
- 26(7) Someone must have the responsibility for investigating complaints.
- 29(1)(a) Agree
- Level 4 building inspector 6 months experience is far too short

ASSESSMENT PATHWAYS HOW WILL THEY WORK?

From a community perspective the language used in the new scheme is almost impossible to fathom. Terms like deemed consent, restricted development, staged consents, code assessed, deemed to satisfy, performance assessed, impact assessed restricted assessed are difficult to follow and understand.



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This is a highly technical paper which is very difficult for community to comment on without going off and receiving some training. See previous comments under Accredited professionals last paragraph page 1. Perhaps DPTI should run ongoing training courses for community to help us understand a system that is not at all easy to comprehend.

We have concerns about LAPS page 19. What does “not fulfilling its role and functions appropriately” mean? Given the number of so called professionals who are supposedly independent such that Community cannot be involved and don’t need to be involved this outcome is concerning. We would recommend rather that the panel should be disbanded by council and a new CAP appointed? The LAPs smack of the Minister not getting what he/she wants and wanting to bend the rules to suit someone or something. Needs much more development re what this might entail.

In relation to Question on page 28 “Should the current scope of “exempt development be expanded to capture modern types of common domestic structures and expected works. This depends on what you have in mind here and what the impact might be on neighbours.

Page 30 Deemed – to – satisfy should not ignore negative impacts on neighbours. Minor variations can lead to significant negative impacts

Page 33 “Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (eg buildings over height). We would expand this to include as well transgressions and breaking the rules for height limits, overlooking transgressions, loss of sunlight and access to solar power, inadequate open space/landscaping, noise issues eg from commercial airconditioning, management of waste and loss of privacy.

We are very concerned about the public notification (development assessment) process. Given there will no longer be advertisements in the news paper how will the general community find out about matters which have wide concern especially given there is only two weeks to respond. We suggest DPTI or Business and Consumer affairs have a public notification portal which is easily checked by community where all notices are lodged. This would require a photo of the notice which would depict the length of time the notice would be in place

Who is responsible for paying for the notice that is to be erected on the land, what specifications will there be and who will make sure that it is in place for the length of time required ie is not taken down early and contains all the information that is required on this



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notice. The only body we can think of to oversee this process is the local council in conjunction with DPTI or Business and Consumer affairs.

The minimization of the notification process would demonstrate a lack of understanding regarding the impact of many developments eg we know one woman who now feels like she is being watched everytime she goes into the garden.

We believe that in relation to "The Act does not specify a right to be heard for representors to performance-assessed development, however the regulations could prescribe otherwise. This important question is under active consideration, to be guided by feedback from this discussion paper." There should be more notification of developments that do not comply and merit decisions and not at significant variation should be reduced from 30% breach allowed to a negligible breach allowed given the huge privileges now given to new developments.

It is extremely difficult for a neighbour who works, has a family and has no knowledge of the planning system to get a submission together in two weeks. They should be given at least a month to do this with help from council planners. This is compounded because the new language is much harder to understand than the current language ie complying is a much simpler term than deemed-to-satisfy

The applicant should be responsible for paying for and placing the notice on the subject land according to prescribed requirements. Councils should be paid to oversee that the notice is not taken down before time etc

Question 15 Should relevant authorities (including accredited professionals) be allowed to dispense with the requirements to provide the mandatory information listed by the regulations/code/practice directions? **Answer NO as this opens up the system to corruption.**

Question 16 Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority? **Answer YES**

Question 17 Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations? **Answer YES**

We do not support Outline Consents as this allows a developer to get some general consents and then develop plans that no longer require consent but breach other aspects of the code or overlays etc This would allow developers to completely manipulate the development system. They must supply their plans before they get any consents. Outline consents are not



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suitable for any kind of development and no authority should be able to issue outline consents.

There is some concern about the responsibilities that will fall on assessment managers under the new scheme and whether this is reasonable especially if matters end up in court. What expectations are there that a private certifier must pay for his time spent in court should he have not approved a development that is then taken to court. The same would apply to assessment managers who work for council given the changes in responsibilities. This needs some attention and thought/development.

Finally there is considerable concern that if a private certifier has a dilemma regarding a development that he does not want to approve due to it not meeting the code but does not want to disapprove due to wanting to retain their business relationship with the developer can under the proposed system sit on the approval for 8 weeks and let it lapse so that the system then automatically approves the application. This is a major flaw in the system that needs to be fixed and eliminated.

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