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To the ReviewTeam,

AMENDMENTS TO THE LOCAL GOVERNMENT (GENERAL) REGULATIONS 2015 – COUNCIL LAND INFORMATION CERTIFICATES

I refer to the above proposed amendments.

There has been quite a substantial change in context, technology and publicly available information since the certificates were put in place in the 1962 Act.

The original section 695 certificate under that Act related to very specific items regarding the land that were determined from the Council's records and information. The details were set out within that section.

The 1993 Act provided for a general description of the certificate within section 337 in being a certificate stating the Council's rights in or powers over specified land. The application form was prescribed and included the questions relating to those rights or powers.

Section 337 was amended in 2000 to be a certificate disclosing information that the Council has on record in respect of any specified land or is required by any other Act to be included in the Certificate. The certificate was then in the form approved by the Director.

The current section 337 provision came into force in 2005 and set out the certificate in the form prescribed in the Regulations. The form was comprehensively changed at this time.

As a result the scope of the 337 certificate has expanded and there has been an increased expectation upon Councils as a repository of information for a purchaser of land including that on behalf of third parties.

In the meantime technology and legislative change has resulted in some information relating to land being held and managed by parties that are not the Council and made otherwise

publicly and freely available. The certificate has however not been amended to reflect these changes,

A specific example is planning schemes, zones, code overlays and specific area plans.

Prior to the interim planning scheme process, each Council held copies of their own scheme(s) and zoning maps. The availability of these in an electronic and consistent form was limited or non-existent.

With the advent of interim schemes and development of the statewide scheme, the Tasmanian Planning Commission is the holder of all things planning including planning schemes and zone and code maps and overlays (see section 80K of the *Land Use Planning and Approvals Act 1993*). The Planning Commission makes that information publicly available through the iPlan website (Scheme text and provisions) and theLIST (zoning and code maps).

In both instances any person, including a potential purchaser and their conveyancing solicitors can easily and readily undertake these searches without the need for any reference to the Council whatsoever.

Despite this fact there seems to be an expectation that the Council provide this information in certificates and therefore be responsible for the time involved in these searches and potential for liability where mistakes occur.

As a matter of principle, where information is otherwise publicly available without cost such as planning zone, planning codes and the like then these should not be included within the certificate. The Certificate could simply provide a strong and clear advisory note directing purchasers to those websites where the information can be found.

This relates specifically to the proposed changes to question 13 (a) and (b).

As a matter of principle it is accepted that questions which relate specifically to records of Council, such as applications, permits and the like, are considered to be appropriate to be dealt with through the certificate process.

With the above in mind, the following specific issues are raised for consideration:

Amendment to Schedule 6 (paragraphs)	**Comment**
(e)	This relates to the substituted provision (a) (ii) which requires the Council to provide a list of any code overlay maps or lists that are applicable to the land under the planning scheme. Aside from creating an unnecessary lengthy document and an environment

	for errors of omission, this information is already publicly available to any prospective purchaser and their conveyancing lawyers through theLIST website. Further, whether or not land is subject to a code is only one part of a complex planning system where the specific use or development that is proposed determines whether or not a code actually applies. All this can do is lead to confusion through the purchase process and generate unnecessary enquiries to the Council in what is a transaction between a vendor and purchaser. Councils should not be required to do this work as a matter of course for a purchaser who has already signed a contract to purchase a property and ought undertake their own due diligence. This question is not necessary and can easily be addressed by an advisory note referring to the fact that land may be subject to codes under the Scheme and any purchaser can refer to the publicly available information on theLIST website. In the event that this remains as a question then this needs to be reflected in an increase in application fee due to the extended time taken to analyse and respond to each code on each parcel of land being sold.
(e)	This relates to the substituted provision (b). To the extent that this includes providing information on whether a specific area plan or a site specific qualification applies to land, this is also available on theLIST and should be provided in an advisory note (see comments above).
(e)	This relates to the substituted provision (d) and requires Council to advise if it is aware of any proposed amendments to the State Planning Provisions that might impact the land. With respect, this is simply too broad and relates to processes which are outside of the Council's control and decision making processes. It creates an unreasonable administrative burden for Council to review advice from the planning commission as to whether or not a proposal indeed impacts upon land and that Council is "aware" of these proposed amendments. This provision is wholly unreasonable for a prudent Council to answer and should be removed.

(g)	This includes insertion of new provisions relating to historical building and plumbing work and information not currently included within the certificate that relates to the *Building Act 2016*. Whilst there is no issue with this in principle there are some practical implications. Regarding historical building and plumbing work, the newly proposed questions include information that was not disclosed on the previous (pre *Building Act 2016*) certificate. This is where searches of records are now proposed to encompass permits issued under the former 1962 Act and applicable regulations. In the unlikely event that post amalgamation Councils hold those records, they do relate to a very different legislative and practice regime when it came to how buildings were constructed and inspected. Any enquiries that arise out of that information may not be able to be dealt with by current Councils as a result and this expectation should not be raised with purchasers. That aside, there is no issue with providing the information if indeed it is available in any Council records. Further these questions create substantial work for Council in providing the correct answers. It also places a higher chance for errors and potential for liability increasing Council costs. This will also have an impact on the Council's ability to deliver certificates within a reasonable time frame. As a result the 337 application fee must be reviewed and increased to reflect the work undertaken.

While the certificate is being reviewed, an ambiguity has been identified in questions 38, 39 and 40 which deal with notifiable building work, plumbing work and demolition work respectively.

Each question contains two distinct matters which are however conjunct:

- Firstly, whether or not a CLC has been received; and
- Secondly, whether or not a certificate of completion has not been issued.

As a result it is the one question which has a "Yes" or "No" answer.

In that event if a CLC has been received but a certificate of completion has been issued the answer will be "No" and the applicant will not receive any information associated with the CLC. This information will only be provided if a certificate of completion has not been issued.

Whilst there is a clear difference between permit and notifiable work, there appears to be no clear distinction as to why there is a complete answer provided for permit work but this is not the case for notifiable given that the Council still has some involvement as permit authority.

It is suggested that these questions be split between each circumstance which makes it clear to a purchaser that they indeed have a building otherwise approved on the land but may not have completion.

I trust that these comments will be considered in the review.

Yours faithfully

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