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Planning Legislation Updates
Submission of Calibre

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1 EXECUTIVE SUMMARY

Calibre Consulting is a firm of professionals delivering services to the urban development industry in:

- Planning
- Surveying
- Civil Engineering
- Water Servicing under Sydney Water's connection requirements
- Water & Environment, including flooding and water quality
- Project Management
- Construction Phase services

Calibre is delivering some of the largest development projects in land supply in the Sydney land release areas and is therefore well placed to understand the complexities of the delivery of new land for housing and employment. Calibre brings experience through pre-Development Application (DA), DA, Construction Certificate, civil engineering works construction and Subdivision Certificate phases to this submission.

Firstly, this submission makes some observations regarding the planning proposals presented in the Planning Legislation Updates. It then deals in detail with Certification of Subdivisions setting out a number of the issues which inhibit the efficient delivery of affordable housing and employment land.

Having set out some of the inhibiting issues, comments are presented on the proposed Schedule 6 of the Public Consultation Draft Bill and then concludes with 34 suggested changes that will deliver more efficient land supply thereby assisting in the delivery of more affordable housing and employment land.



Figure 1-1: Entry to Harrington Grove

2 INTRODUCTION

The Government of NSW through the Department of Planning and Environment (DOPE), in January 2017, has published Planning Legislation Updates. Through the documents located on the DOPE website;

(<http://www.planning.nsw.gov.au/Policy-and-Legislation/Legislative-Updates/Key-documents>)

DOPE has set out the intended changes to the legislation and now seeks comment from the stakeholders through the public consultation period from 10 January 2017 to 10 March 2017.

Calibre Consulting makes this submission in response to the Key Documents of planning legislation updates and the current concerns regarding Housing Affordability with the intent of assisting in the effort *“to help build a simpler, modern planning system.”*



Figure 2-1: Oran Park Town

3 PLANNING

3.1 PRELIMINARY

The Environmental Planning & Assessment Act (the Act) is now 38 years old with numerous amendments, modifications and changes. With several recent attempts by Governments to rewrite the Act, which have, all not progressed to finalisation. The Act is in desperate need for updating to reflect current thinking and better co-ordination of all forms of approvals being strategic planning and development approvals.

Calibre supports the need to reform the planning legislation however; the general thrust of the planning Bill is to amend the current Act with whole suits of changes that in our view make the Act more complex and legalistic. The planning Act should be made simplified and not be made more difficult in its interpretation and consequentially this will influence in the processing of approvals. The Act that enables development to occur needs to be a simpler planning system to meet, not just current housing demands, but the future needs of a growing Sydney and the regions of NSW if the State is to transform into a driven economy enabling development.

This submission is made from a practitioner's viewpoint as planning and engineering consultants with a prime focus on strategic planning and development approvals. The relevant sections of the suite of documents that are on exhibition are critically reviewed with comments and suggestions throughout this submission.

3.1.1 ENHANCING COMMUNITY PARTICIPATION

All applications for consent, for local development, will be required to be exhibited for a minimum of 14 days.

Comments:

It is unnecessary and is considered that this will cause delays for all applications to be exhibited.

Minor applications such as minor amendments, advertising signage, landscaping, car parking and works ancillary to an approved development should not be required to be exhibited.

Councils' policies should be sufficient to enable appropriate notifications, where required, in the form of letters to adjoining owners for procedural matters and only public exhibition for major developments.

Public exhibition of proposed developments should only occur for a prescribed list of developments in a Council's approval policy that may be considered to have an impact because of the proposed development such as residential flat buildings and shopping centres.

3.1.2 STATEMENT OF REASONS FOR DECISIONS

Comments:

The proposal for reasons to support decisions as well as the reasons for the imposition of conditions is supported.

3.1.3 BETTER PROCESSES FOR LOCAL DEVELOPMENT

The Department will conduct further research into current barriers to early consultation and possible options and incentives to overcome them.

Comments:

Early consultation and resolution of issues prior to lodgement of an application should be encouraged.

Incentives are not appropriate as a means of achieving adequate consultation. Incentives cannot be quantified and should not be seen as a reason for consultation.

Consultation and agreement by adjoining owners should achieve a speedier process of applications and should not require any notification.

Some Councils still notify adjoining owners even though agreement and signature on development plans has occurred.

This process of unnecessary notification of applications should be removed when agreement has been reached and adjoining owners have been consulted and agreed on an application. This should suffice as an incentive for applications to remove unnecessary consultations.

3.1.4 STEP-IN POWER TO ENSURE TIMELY APPROVALS

Comments:

The Department of Planning & Environment should ensure that agencies and departments that are consulted in respect to an application, **deal with matters within the prescribed time frames** set between the Department and the agency. Step-in powers as necessary are appropriate.

However, the role proposed for the Department to have a “facilitation team” to attempt to resolve concurrences and comments from agencies is considered to be a difficult proposal unless the Department is sufficiently resourced to be able to follow up with other agencies. Neither the Department nor the Council officers have control over agencies.

Examples such as RMS comments and Office of Environment & Heritage concurrences under the Water Management Act are two of the most common matters that take the longest period of time to receive comments and resolve issues.

One of the more protracted referrals is for an Aboriginal Heritage Impact Permit (AHIP). See <http://www.environment.nsw.gov.au/resources/cultureheritage/140788AHIPappform.pdf> for an application form for this permit. Much of the information can be readily obtained from the DA information.

Affordable housing will not be solved unless these referrals to other state agencies are streamlined, both during the DA process and post DA approval where more state agency involvement occurs, which can delay commencement of construction works.

3.1.5 ONGOING REVIEW OF CONCURRENCES AND REFERRALS

Comments:

In order to ensure timely approvals it is considered necessary to amend and remove the numerous concurrences and referrals that exist for development approvals.

Most often an agency provides general terms of approval for the issue of a licensed activity or permit, such matters can easily be imposed as conditions of consent and be resolved prior to the issue of a Construction Certificate.

It is an unnecessary delay with all applications being referred to other agencies for comments where such matters are best resolved at the planning rezoning process.

To provide a better planning approval process the need for concurrences and referrals should be removed with subsequent amendments to the other legislation.

The Act should be the central and co-ordinated approval for all applications and it has been a well-versed criticism of the approval process for applications that concurrences and referrals create unnecessary delay with applications.

Consultation with agencies should be allowed to occur prior to lodgement of applications to ensure their comments are addressed with an application and this should remove the need for referrals. Matters for comments and requirements from agencies should be in the form of standard practice notes to be reflected in conditions of approval.

3.1.6 PREVENTING THE MISUSE OF MODIFICATIONS

Comments:

The proposed amendments refer to:

- “strengthening deterrence of unauthorised works” and
- “modifications must take into account reasons for original consent”

These are put forward as the reasons to prevent the misuse of applications to modify consents. While this situation may occur for works where an applicant has carried out unapproved works, this can be regulated by allowing development to be approved through an application and not a modification for retrospective works or use.

The better approach is to approve such unapproved works by the lodgement of an application for development and not through a modification process.

In reality, a Council often makes the misuse of modifications where the approval authority insists on a modification application for what is minor works such as the addition of retaining walls. Retaining walls are often only designed following the approval in-principle of the proposed development. Councils are misusing the powers of an application to modify a consent to hold up the issue of a Construction Certificate. It is not considered warranted to require an application to modify approved plans should it be demonstrated that the additional retaining walls are consistent with the conditions and reasons imposed in the consent.

This could be resolved if the Act was amended to enable an assessment and conditions to be imposed on a Construction Certificate. The issue of a Construction Certificate needs to demonstrate consistency with the consent conditions. As such being able to impose conditions on a Construction Certificate would remove the misuse of modification applications.

3.1.7 LIMIT SOME SENSITIVE CATEGORIES OF COMPLYING DEVELOPMENT TO COUNCIL CERTIFIERS

“The regulations will be able to specify certain categories of development for which only a council certifier is authorised to issue a complying development certificate. Where councils are best-placed to decide whether a complying development proposal meets the standard.”

Comments:

This amendment is contrary to the intention of complying development. Complying development is meant to be development that complies with the standards in a planning instrument and is not located in environmentally sensitive areas or environmental heritage items or require concurrences or approvals for referral bodies.

The regulations should not differentiate for different types of complying development as to whether the approvals can only be issued by Council.

Complying development is, as of right, to development, subject to compliance with the standards and there should be no assessment or interpretation as to where complying development should apply. Complying development should be able to be issued by either a Council certifier or an Accredited Certifier.

3.1.8 CONSTRUCTION CERTIFICATES

“Consolidating building regulation and subdivision certification provisions into a single part of the Act;

Enabling regulations that allow accredited certifiers to place conditions on the issue of construction certificates and complying development certificates;

Ensuring construction certificates do not allow proponents to depart significantly from planning approvals.”

Comments:

The Bill proposes certain changes to the Certification process and is dependent on details in the regulations.

The issue of construction certificates needs a quicker and easier transition from the consent to the approval to commence construction.

The ability to impose conditions on a construction certificate is supported and will enable resolution of application, whereas, currently, councils are seeking modification of the consent.

The ‘test of consistent’ with the consent and conditions of approval is open for interpretation and needs to be explored in details with the regulations. The reasons for imposition of conditions will greatly assist in interpreting the conditions and should enable the certifier to issue a construction certificate should it be demonstrated that it is consistent with the approval, the conditions and the reasons for the conditions.

3.2 GENERAL COMMENTS

3.2.1 SUBDIVISION WORKS

The Bill proposes a new definition of subdivision works as:

“Subdivision works means any physical activity authorised to be carried out in connection with a subdivision under the conditions of development consent for the subdivision of land.”

This new provision stipulates that any activity associated with the subdivision of land require consent. This is too broad a definition and is not workable in the preparatory fieldwork leading to a subdivision application. For example, site investigation works such as surveying and pegging out a site, geotechnical investigations and borehole testing and tree surveys are all works associated with the preparation of a subdivision and should not have to wait until an approval is issued.

The site investigations works for a subdivision should be under the *Exempt Development* category of the Act. The fieldwork and borehole testing as well as other survey work should be exempt from the Subdivision Works definition. The site investigation works should be exempt development under the State Environmental Planning Policy (Exempt & Complying Development) 2008 (as amended).

3.2.2 CERTIFICATION / ACCREDITED CERTIFIERS OF PUBLIC ASSETS

The Bill amendments are silent on the issue of certification and accredited certifiers being able to issue certificates for public assets. A number of councils take the position that the council is the only body that can issue approval for works involving public assets such as roads and drainage. This is incorrect and subject to legal challenge in that, councils cannot mandate that the council is the only certifier for public asset works. More often applicants erred on the side of caution in following the council's conditions of consent which state that the council is the only certifier to issue a construction certificate for these works.

This is a blatant disregard by some councils to restrict the issuing of Certificates by Accredited Certifiers other than the council. This practice needs to be corrected in the amendments.

In addition the issuing of Subdivision Certificates being the final process to enable the registration for a subdivision should not only be the domain of the councils. The councils in practice are unnecessarily holding the issuing of subdivision certificates pending matters that could be resolved with bonds or other means to enable the release of the certificate.

Subdivision Certificates need to be able to be issued by either council or accredited certifiers.

This amendment to allow accredited certifiers to issue subdivision certificates would allow a quicker processing for the registration of new subdivisions, which is a benefit to both the applicant, and the purchaser of the lots enabling quicker supply to the market, and will contribute to more affordable housing.

4 CERTIFICATION OF SUBDIVISIONS

4.1 BACKGROUND

Certification of development first appeared in the Environmental Planning & Assessment Act (EP&A Act) in July 1998 (see Historical Version 1 July 1998 to 9 July 1998) as:

- Part 4A Certification of development
- Part 4B Accreditation of certifiers.
- Part 4C Liability and insurance

As early as 1998 issues were identified through the Department's reference group (of which Stuart Green of Calibre was a member), that could make Certification work better, particularly in the area of infrastructure (civil engineering works) associated with developments. The flaws identified included:

- 1) Definition of Subdivision Works and Building Works
- 2) Inability to issue Construction Certificates with conditions
- 3) Inability of Subdivision Certificates to be issued by Accredited Certifiers
- 4) The Accredited Certifier responsible for issuing of Construction Certificates for civil works on development sites which were predominantly Building Works sites
- 5) Councils not taking the opportunity to use the Accredited Certifiers to do much of the technical inspections of civil engineering works but continuing to rely on works inspections by Council inspectors some of which had no technical or professional qualifications; they had simply worked in the Council for a long time and knew what to look for through experience
- 6) No requirement for Council staff doing Construction Certificates and civil engineering works inspections to be personally accredited. This has led to Accredited Certifiers of civil works (Subdivision Works and infrastructure works) to be more qualified than Council officers and yet being unable to exercise that experience
- 7) Introduction of Integrated Development was supposed to assist in having all the approvals from various state agencies included in the development assessment process. This failed as developers still need to obtain permits from other agencies to allow construction work to proceed, even though the general terms of approval are included in the consent conditions

At that time, the officers of the Department of Planning recognised there were shortcomings in the EP&A Act with respect to Certification of Subdivision Work, but there was no action taken at the time, as there was a more pressing need to address the shortcomings associated with the Certification of Building Works. Also of pressing concern was the process of the accreditation of Certifiers for Building Works. Subdivision Works, and the certification of those works, was not considered a high priority at that time, and never has since.

Various reviews and amendments have taken place to the certification process and to the EP&A Act since certification first appeared in 1998 and never has the issue of civil engineering works certification been fully addressed. It is hoped that these issues will be addressed in this current review.

4.2 DEFINING THE PROBLEM

4.2.1 WORKS DEFINITIONS

The current EP&A Act, defines two types of work; Building Work and Subdivision Work. Table 4-1, shows the definitions in the current Act and the public consultation draft.

Table 4-1: Definition of building and subdivision work

Work	Current EP&A Act	Public consultation draft
Building work	Building work means any physical activity involved in the erection of a building s4 (1)	Building work means any physical activity involved in the erection of a building. Schedule 6 s6.1
Subdivision work	<p>Subdivision work means any physical activity authorised to be carried out under the conditions of a development consent for the subdivision of land, as referred to in section 81A (3).</p> <p><i>(Section 81A (3) states “A development consent that enables the subdivision of land may authorise the carrying out of any physical activity in, on, under or over land in connection with the subdivision, including the construction of roads and stormwater drainage systems.”)</i></p>	<p>Subdivision work means any physical activity authorised to be carried out in connection with a subdivision under the conditions of a development consent for the subdivision of land.</p> <p>For the purposes of this definition, a development consent includes an approval for State significant infrastructure if the regulations under Part 5 apply this Part to subdivision work under such an approval.</p> <p>Note. Section 4 (Definitions) includes a complying development certificate in the definition of development consent for the purposes of this Act.</p>

The definition of Building Work has not been changed.

However, the definition of Subdivision Work has been changed but for no apparent reason.

The public consultation draft (PCD) definition of Subdivision Work seems to make things a little more complicated than is necessary, adding to the definition with respect to State Significant Infrastructure. However, the proposed definition does not add simplicity to the definition for the majority of subdivision developments, which are not state significant infrastructure.

Building works can easily be understood. The Building Code of Australia contained within the National Construction Code as agreed by the Australian Building Codes Board, clearly articulates the classification of buildings and structures. One only has to consult this Code to understand what a building is. Table 4-2 below summarises the building classes contained within the National Construction Code.

Table 4-2: Buildings classes under the National Construction Code

Class	Building / Structure
1a	Single dwelling
1b	Boarding house, guest house or the like
2	Multi sole occupancy units
3	Residential building for transient living
4	A dwelling in a Class 5, 6, 7, 8, 9 if it is the only dwelling in the building
5	Office building
6	Shop or other building for the sale of goods by retail . . .
7	Carpark or for storage or display of good for wholesale
8	Laboratory or building for the production, assembling
9	Building of a public nature
10	Non-habitable building or structure – fence, retaining wall included

It is unfortunate that there is no national body that is able to classify Subdivision Work with the same accuracy. In the absence of such a succinct codified definition an attempt will be made to define subdivision work, below. The first question that must be answered is; what is subdivision work? What does it look like?

Subdivision work consists of the following civil engineering activities:

- Installation of soil and water management measures to limit polluted runoff from a site
- Clearing of trees (as approved by a development consent), and other vegetation to allow new works to proceed
- Demolition of buildings (old houses) and structures (usually sheds) that are redundant and do no form part of the proposed subdivision
- Remediation of contaminated parts of a site
- Removal of rubbish off site and export of excess material surplus to the needs of the site
- Bulk earthworks (BEW) – the re-shaping of land to facilitate a new land surface to allow efficient erection of new housing often requiring importing/exporting of soil for filling
- Road works – excavation for and placement of pavement materials to form a new road surface including kerb & gutter, shaping of verges, sealing of the pavement materials using asphaltic concrete or stone spray seal
- Installation of concrete driveways, laneways, footpaths to provide access to individual properties being created in the subdivision
- Stormwater drainage – installation of pits and pipes to convey stormwater off roads and new house sites to receiving waters (creeks and rivers) via stormwater detention basins as required
- Stormwater detention basins – excavation for basins of specific volume to assist in the control of increased runoff from development sites
- Installation of sewer pipes and associated maintenance holes to convey wastewater from the new home sites
- Installation of water mains to bring water to new home sites, including associated surface fittings for valves and hydrants and the like
- Installation of electrical reticulation cables, conduits, pillars, substations
- Installation of pit and pipe and associated fittings for telecommunications including NBN if available
- Installation of gas reticulation pipes
- Construction of retaining walls to support:

- roadways
- adjacent land parcels (interallotment retaining walls) which have been constructed with flat grades to allow ease of construction of new houses
- drainage corridors and riparian corridors
- Installation of scour protection including placement of rocks, jute matting, geotextile, gabion structures, etc
- Revegetation of new ground surfaces by grass seeding, hydromulching
- Protection of land surfaces by mulching, compost spraying and other similar techniques
- Installation of street trees and other landscaping

In addition, some subdivisions also require installation of:

- Water quality devices in underground concrete chambers
- Water quality raingardens both on public land and on private land
- On-site detention tanks usually underground, but can be at ground level, made of reinforced concrete, besser blocks or other structural elements

So the question posed above is now answered. All the listed work is done to create new subdivisions, to a lesser or greater extent, for each subdivision. The same work is also done to support other developments which are not subdivisions and do not require the erection of a building. So where do these developments fit? Some of these cases will be presented below.

A matter that has not been dealt with in the proposed changes to the certification of development, is the one for which a “work around” has been developed. This occurs when a development, not being a subdivision, requires civil engineering works. In these cases, where an Accredited Certifier is able to issue a Construction Certificate, a certifier accredited in civil engineering matters certifies to a Principal Certifying Authority (usually a Building Certifier) that the proposed civil engineering infrastructure works are satisfactory, the PCA then issues the CC totally relying on the civil engineering certifier. The PCA has no role in the project other than this. Whereas, if the works were required by a subdivision, the civil engineering certifier would be able to issue the CC without reference to a Building certifier. This introduces inefficiency and extra cost for a developer.

In these circumstances the certifier accredited in civil engineering matters should be allowed to issue the CC without reference to another certifier, as is the case for subdivision works CCs.

4.2.1.1 INVESTIGATION WORKS

Investigation works consist of physical works such as:

- Land survey and minor clearing of vegetation to facilitate land survey work but not tree removal
- Geotechnical boreholes
- Test pits for geotechnical and contamination sample collection
- Establishment of temporary compounds for preparatory works such as those listed above
- Tagging of trees for identification
- Collection of seeds from trees, shrubs and other vegetation

Under the proposed definition of Subdivision Works, these works would not be permissible until a consent is issued. This means that the works required to enable the preparation of the development application could not be started until the consent was issued. A circular argument. The revised Act should recognise that investigation works are necessary to enable development applications (including subdivision applications) to be prepared and lodged.

Investigation works, which are generally temporary in nature, should be permissible without consent.

The establishment of civil works contractor compounds should also be permissible after consent is issued but before a CC is issued.

4.2.1.2 CASE 1 – CREEK REHABILITATION

Calibre is working on a development where the application was made for Creek Rehabilitation Work. The work consisted of:

- Earthworks
- Placement of rock scour protection
- Placement of jute mat scour protection
- Installation of planting to stabilise earthwork areas

The value of the works was \$5.6million. This application did not involve a “building” or a “subdivision”. Therefore, the Works under the application do not fall under the definitions in the existing Act or the proposed Act. In this case and others like it, there is no clarity about the ability of an Accredited Certifier to issue a Construction Certificate. Certainly, an Accredited Certifier for Subdivision Works would be able to consider and issue a Construction Certificate for such works, as they are essentially civil engineering infrastructure works, identical to works classified as Subdivision Works.

4.2.1.3 CASE 2 – BULK EARTHWORKS

Another example of work that does not fit a definition is the case where a development application was made for “Bulk Earthworks”. Calibre is currently working on such a development. These works are the same as bulk earthworks that form part of “subdivision works” but because the development application does not include a subdivision of land, the works are not considered by the consent authority as Subdivision Works. Neither are they works Building Works as there is no building involved. The value of the bulk earthworks for this development is \$5.8million.

4.2.1.4 CASE 3 – INFRASTRUCTURE

In some circumstances, a developer will make application for “infrastructure”. This infrastructure can be:

- Stormwater detention basins and raingardens
- Roadworks that will serve buildings or subdivisions that the developer has not fully resolved and therefore cannot make the relevant development application for the building or the subdivision
- Roadworks or bulk earthworks to serve a single lot that will later be subject of a future development application for a building or subdivision. These are typical in the Western Sydney Employment Lands and other industrial areas

- Roadworks or bulk earthworks that will serve a small building. The majority of the works are civil infrastructure works with only a small value content of building works
- Roadworks that will serve a precinct in an overall subdivision estate (Calibre has a project that includes such an application at the moment consisting of 885m of dual carriageway road, a signalised intersection on an RMS road, and a roundabout 275m into the site to serve future commercial development.)

These infrastructure works consist of the same type of works as listed in Section 4.2.1, above. They are certainly not works that involve the erection of a building. Because there is no subdivision involved they cannot be classified as Subdivision Works, using the logic articulated by the consent authority for this proposed development.

4.2.1.5 CASE 4 – MINOR WORK

Minor work is that work that will connect a subdivision or a building development to an existing road or the infrastructure within an existing public road. Councils insist that these works are subject of separate application under the Roads Act to the Road Authority. The scope of these works are often minor such as:

- a vehicle crossing concrete apron from an internal road system or driveway to the existing kerb in a public road
- connection of a stormwater pipeline from a development site to an existing stormwater pit in an existing public road or the existing kerb
- Reformation of the kerb of an existing public road with kerb returns to an internal driveway for a development such as townhouses or an industrial building or commercial development precinct
- Construction of a deceleration lane to permit vehicles to enter a development safely

For all of these cases, if the works were part of a subdivision and contained within the development site, an Accredited Certifier would issue a Construction Certificate. However, because the works are to be done on an existing public road, the road authority, under s138 of the Roads Act, requires a separate approval, which can only be issued by the Road Authority. This leads to inefficiencies and the delay of the commencement of projects due to having to obtain a Roads Act approval and a Construction Certificate. It makes sense that a single party be able to issue the Construction Certificate for all the works associated with a development. This single party should be the Accredited Certifier so accredited for civil engineering works. It can be an Accredited Certifier employed by a Council or by an Accredited Certifier not employed by a Council.

4.2.2 ROADS ACT WORKS

A practice has developed in the development industry, that any works associated with a development, be it a building development or a subdivision, carried out on an existing public road, must be subject to a Roads Act Approval (see also Section 4.2.1.5 above). This stems from the use of s138 of the Roads Act to trigger Integrated Development.

In the early years of development certification, a seminar was conducted for Councils and Certifiers at Liverpool City Council. At this seminar, a lawyer that was involved in drafting the Roads Act indicated that s138 was being misused, as it was never meant to govern *roadworks*. It was meant to control *ancillary* works such as those indicated in the section being:

- (a) erect a structure or carry out a work in, on or over a public road, or
- (b) dig up or disturb the surface of a public road, or

- (c) remove or interfere with a structure, work or tree on a public road, or
- (d) pump water into a public road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified road

Section 138 occurs in the Roads Act Part 9 Regulation of works, structures and activities. Whereas, Part 6 deals with Roadwork. The logic being, if the Part 9 was meant to control roadwork its clauses would be within Part 6. Adding further weight to this logic is that within Part 9 the matters controlled are:

Table 4-3: Roads Act Divisions

Roads Act Part 9 Division	Title
1.	Footway restaurants
2.	Public gates
3.	Other works and structures – (<i>not roadworks</i>)
4.	Road events
5.	Light rail systems
6.	Private railways

There was an argument put by the Roads and Traffic Authority (RTA) (now Roads and Maritime Services (RMS)) that only RMS officers were qualified and experienced to deal with road matters on classified roads. The RMS has now moved away from that in that when any works on classified roads (RMS controlled roads), a Works Authorisation Deed (WAD) is required to be entered into between the developer and the RMS. This WAD requires that the developer retain the services of an Independent Project Verifier (IPV). The WAD indicates that the IPV:

- “(ii) is a Chartered Engineer registered with the Institution of Engineers Australia,
- (iii) is familiar with and experienced in using RMS’s QA Specifications; and
- (iv) holds appropriate professional indemnity insurance.”

The IPV under the WAD process is equivalent to an Accredited Certifier under the EP&A Act. Indeed there are IPV's that are in fact Accredited Certifiers accredited in civil engineering. It seems a natural progression to bring RMS works under the same certification processes as developments, particularly when the works on the RMS road arise from a development approved under the EP&A Act.

Staff at Calibre currently act as IPV's on a number of projects and work with Accredited Certifiers that are IPV's on other projects for which Calibre is the consultant project manager and designer.

4.2.3 CERTIFIER ACCREDITATION

Currently there is no requirement for Council officers issuing Construction Certificates for Subdivision Works to be accredited. This is inconsistent with the requirements for Building Certifiers where Council officers are accredited.

Indeed, when a search for an accredited certifier is conducted on the Building Professionals Board website, the page at Figure 4-1 indicates that Council Officers are a separate search category. For example, none of the Council officers listed with Blacktown City Council of which there are 21, are accredited for anything but A1, A2 or A3 certification, being Building Surveying Grade 1, 2 and 3.

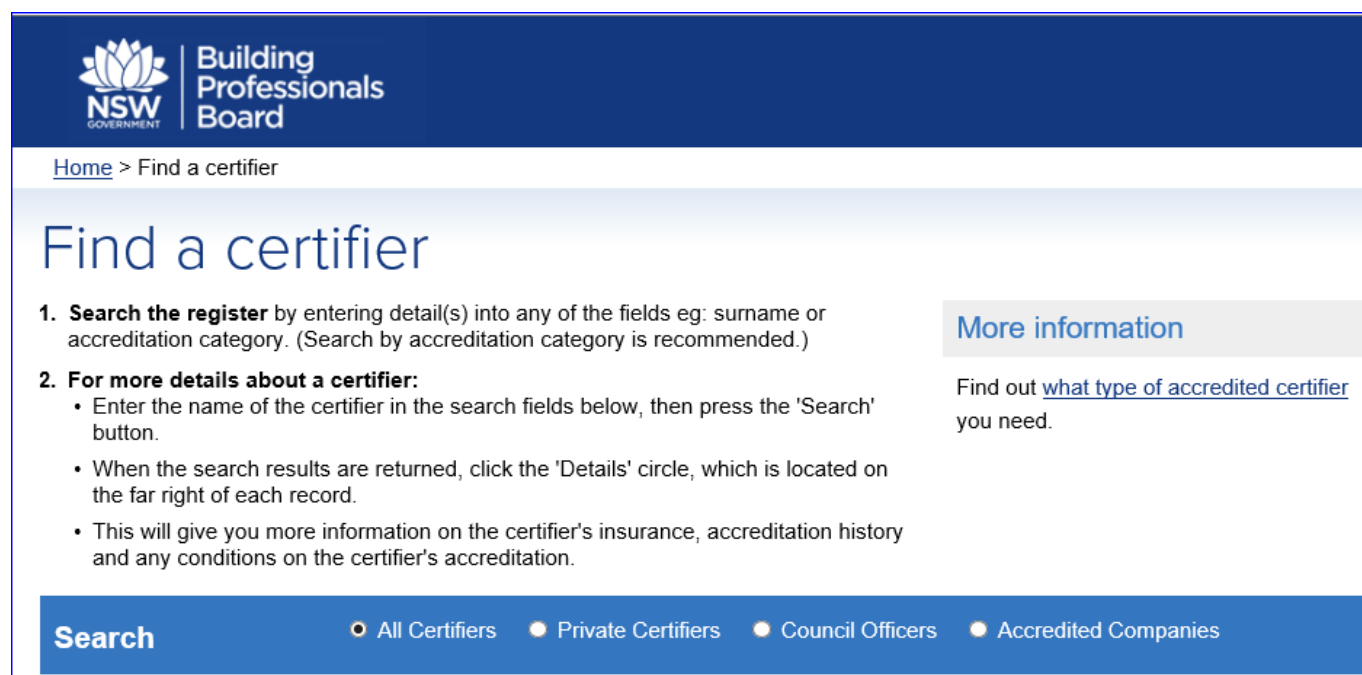


Figure 4-1: Search page Building Professionals Board

Why this inconsistency?

Local government presents the argument that subdivision works become Council's assets and therefore should only be certified and inspected for compliance by Council officers. This argument is flawed in that the staff that review and issue Construction Certificates and carry out Compliance inspections are potentially less qualified and experienced than those people carrying out the same activities as Accredited Certifiers. Recently people have moved from local government employment to be employed by Accredited Certifiers, so the skills and experience acceptable in local government is all of a sudden NOT acceptable because their employer has changed? There have also been examples of Councils hiring Accredited Certifiers on short term contracts, to assist in assessment and certification of backlog applications.

If one looks at those Accredited Certifiers that are accredited in the categories required for Subdivisions, these are senior professionals that either have run the Council's own engineering development activities, or would be well qualified to run these activities within any local government. The skills, experience and capability of the Accredited Certifiers is not being put to question it seems, but a perception that if a person is paid directly by a developer then their decisions are tainted. There is no evidence in the world of subdivision certification to support this perception.

The experience of Calibre, is that Accredited Certifiers are much more likely to be more scrupulous in their review and assessment of documents and works than is a Council officer. Probably because the Accredited Certifier is aware of the

legal obligations to perform the certification role and the risk that not performing correctly puts to the Accredited Certifier's reputation, insurance exposure and commercial position.

The bottom line is that certification by an Accredited Certifier should be regarded as the same whether the certifier is employed by a Council or by a company that is accredited. That has always been the intent of the certification system since its inception. Therefore, a certifier within a Council should hold the same accreditation as one acting outside of Council and should be accredited through the same process as is the case for Building Certifiers. Going a step further, if this logic was applied, then an Accredited Certifier employed by Council A should be able to issue a CC for a development within Council B.

It appears from the public consultation draft Bill that his area of certification has not been addressed at all.

4.2.4 SUBDIVISION WORKS STANDARDS

Each Council needs to publish its standards and where there is no published standard the Certifier should be at liberty to adopt a standard that is suitable. Accredited Certifiers often consult with Council officers where there is a "grey area" in a design or construction standard published by a Council. This slows down the certification process. More strength should be given to the existing s109O where it states:

*"...the regulations **may** provide that any requirement for a consent authority or council to be satisfied as to any specified matter (or any matter of a specified class of matters) is taken to have been complied with if the certifying authority is satisfied as to that matter."* (Emphasis added)

The section is weak where it states "may provide". It should be strengthened with words to the effect that:

"where there is any doubt in a Council document or published standard the matter is taken to have been complied with if the certifier is satisfied to that matter."

This would enable an Accredited Certifier to exercise his due skill and care in being satisfied as to a matter and would then not be delayed in consulting with a Council. This would also overcome the practice of Council certifying officers that set their own standards which are sometimes not published or are in conflict with the Council's own published standards, which happens regularly.

4.2.5 ILLEGAL CONDITIONS OF CONSENT

A practice has arisen where some Councils include conditions of consent which indicate that they are the only party able to issue a Construction Certificate or Compliance Certificates for works which will be taken over by the Council as being their assets. This practice has been reviewed by lawyers that indicate that this is illegal and should be ignored.

However, the problem arises that at the end of a project the developer perceives that they could be held to ransom by the Council at the time of the Subdivision Certificate and so the developer submits to the Council's demand and employs the Council as its certifier to issue Construction and Compliance Certificates.

This practice could be stopped by permitting an Accredited Certifier to issue a Subdivision Certificate. There are other reasons to support this proposition which will be further discussed below.

4.2.6 INFORMATION REQUIRED FOR DA FOR SUBDIVISIONS

Councils are now requiring so much information at the development application stage (DA) that the drawings produced are almost at Construction Certificate detail. You could just about use some DA drawings as CC drawings simply by changing the drawing status to CC. This is not what the DA phase is about. Surely the DA phase is to describe the proposal with enough detail for the assessing officer to determine the impacts of the development to make a merit assessment. After this merit assessment is complete, the drawings can then be developed in more detail to meet construction requirements for issue of a CC.

The need by some Councils to require more and more detail on drawings is one of the reasons that merit assessment of DAs takes such a long time. As of 22 March 2017, a Council requested Calibre to have the dimension of a driveway to be put on the drawing even though the drawing called up the Council's standard. Even if there was no standard, the Council could have simply put a condition of consent stating that the driveway is to be X metres wide. This was not done. Instead the process was halted for "further information", Calibre had to do drafting, "up rev" the drawings to revision 3, get them signed off having gone through the QA process for issue of drawings, re-send them to the Council. And all for the sake of a dimension which was not critical to the project.

The reforms to the planning legislation do not address this issue.

4.2.7 CONSTRUCTION CERTIFICATE CONDITIONS

Not being able to issue a CC with conditions means that Councils and Certifiers must get the plans amended even for minor issues. This delays the issue of the CC particularly when times are busy as even for small amendments resources must be re-directed to amend the drawings and then go through the QA review process before they can be re-issued.

It would speed up the issue of CCs if a certifier could issue a CC with conditions. Such conditions used to be used when engineering plan approvals were done prior to the Local Government Act 1993. If subdivisions are looked at prior to 1993 and post 1993, it will be found that, in their essential nature, they are still the same. However, the approval to commence construction prior to 1993 was done quicker by far than it is now, (even with Accredited Certifiers able to issue CCs). Of course, if there are amendments to the drawings that changes the constructed outcome, then the drawings should be amended.

The planning reforms appear to address this existing shortcoming in the issue of Construction Certificates, however, the ability of a certifier to impose conditions should be clarified in more detail to give certainty.

4.2.8 CONSTRUCTION CERTIFICATE MULTIPLE REVIEWS

Submissions to Councils are often reviewed multiple times. An initial CC submission is reviewed and comments and requests for information are provided by the certifying Council officer. Upon resubmission addressing all the issues, it is not uncommon for the certifying officer then to ask for further information, or to change their mind, on an issue that has already been reviewed and addressed in the re-submission. This requires the consultant design engineer to have to go through the process a second and sometimes a third time to address extra issues that the Council certifying officer didn't pick up on the first review. This re-submission process obviously delays the whole CC process.

Although the regulations allow for a deemed refusal after 28 days for a CC, this is not helpful. There is no developer that is willing to take a CC deemed refusal to appeal as that would just slow the whole process down. There must be a better way to make the CC review process more efficient, with a deemed refusal approach being the last option for intransigent Council certifying officers.

A satisfactory process would be as follows in Table 4-4.

Table 4-4: A reasonable CC review process

Description	Allowable period
Initial review	3 weeks – 21 calendar days
Second review and issue of the CC (assuming all the issues raised in the initial review have been satisfied)	2 weeks – 14 calendar days
Total review period for issue of CC	5 weeks – 35 calendar days

This process should be followed by both Council certifying officers and Accredited Certifiers issuing CC for Civil engineering works whether they be for subdivisions or other developments which require these works.

A DA / CC program for an integrated development with different certification options is contained at Appendix A. This indicates that delays in the process can make even a simple development take about six months (28.2 weeks on the program) from lodgement of DA until start of construction works.

4.2.9 SUBDIVISION CERTIFICATES

Currently Subdivision Certificates (Sub Certs) are only issued by Council officers. This is despite the current legislation that allows for them to be issued by Accredited Certifiers when an environmental planning instrument permits (s109D (1) (iv)). Councils in developing areas do not have this facility in their environmental planning instruments, so only the Council can issue the Sub Cert in these areas.

The problem arises in that Councils have limited resources and there is a delay, sometimes a lengthy delay, in checking that all the requirements to issue the Sub Cert have been fulfilled by the developer. At this stage in the subdivision development process, time is of the essence because:

- All the land has usually been sold by the developer
- All of the money has been paid out by the developer and any delay now attracts the highest monthly interest charges a situation from which only the lender derives any benefit.

The checking of Sub Cert applications is really a technical matter. Consider the people within the Council that check off whether a Sub Cert application is acceptable; they are not accredited certifiers, nor are they often senior professionals. This is not to say that they are not competent at what they do, however, they are not qualified, experienced and skilled at the same level as an Accredited Certifier. Therefore, it is reasonable to conclude that an Accredited Certifier is perfectly capable of reviewing a Sub Cert package and issuing the certificate if all is in order. Accredited Certifiers are competent to issue Strata Certificates which are just as important to the new owner of a strata lot as is a Subdivision Certificate to a new lot owner in a subdivision. There is little on the public record of Strata Certificates being invalidly issued by Accredited Certifiers. Why would there be any hint that Accredited Certifiers would issue Subdivision Certificates invalidly or incompetently?

Consider the case where the Crown creates a subdivision and is the consent authority. Under this scenario, who would consider and issue a subdivision certificate? Would it be an officer of the Crown? No, this scenario has occurred and the Department of Planning had commissioned an Accredited Certifier to assess and issue the Subdivision Certificate.

Based on recent experience, a program has been prepared to demonstrate the time taken to complete the Subdivision Certificate process. This is contained at Appendix B. The program indicates that by using an Accredited Certifier the process can be reduced from an actual period of 20 weeks for some recent projects undertaken by Calibre, to 12 weeks.

The proposed planning reforms do not address this critical issue.

4.2.9.1 HOUSE ADDRESS

Councils are now requiring that new lots are allocated house numbers prior to release of the Plan of Subdivision from the Council. This delays the release of the Subdivision Certificate (Sub Cert) for a purely administrative matter that could be dealt with after the release of the Certificate as it was previously and still is in some Councils.

This is a minor administrative matter that the proposed reforms do not address.

4.2.10 DELAYS IN PROCESSING

One of the issues that has a direct impact on the affordability of housing is the delay that occurs during a development project. Delays which occur include the following, which are outside the control of the developer:

- DA process
- CC process
- Sub Cert process
- State agency approvals for construction
- State agency acceptances at completion of construction; e.g. at the end of the WAD process with the RMS
- Commonwealth agency approvals for construction – referrals under the Environmental Protection and Biodiversity Conservation Act 1999 (Cth)
- Registration of the Plan of Subdivision at Land & Property Information

Much of the focus has been on the delays during the DA process with statistics being kept, target days in the legislation, stop-the-clock provisions, etc. The Local Development Performance Monitoring website run by the NSW Department of Planning & Environment, reports that in 2014-2015 there were 62,647 DAs determined with an average determination time of 71 days. On that same website it also reports that there were 53,626 construction certificates, 4519 subdivision certificates and 1134 strata certificates. Also reported was that 11.6% of DAs (7267) were referred to external agencies; the average time for referrals was 51 days.

From that data published some observations can be made regarding delays drawing upon the requirements in the Environmental Planning & Assessment Regulation 2000 Division 11 Time within which development application procedures to be completed:

- The average time for determination of DAs at 71 days exceeds the deemed refusal period of 40 days for “normal” DAs and 60 days for designated, integrated or concurrence DAs
- Referrals to agencies on average took 51 days which in effect gives the Council only 9 days to determine the DA within the deemed refusal time period for integrated DAs which is 60 days. This is unsatisfactory and contributes to delays
- Most DAs requiring referrals to agencies exceed the deemed refusal period

This submission will not deal with delays arising through the DA process. Other delays are more relevant to this submission regarding subdivision certification.

There is a cost to any delay in a project and it has many impacts, not the least on the developer through the time cost of money; ie interest. To quantify that cost in simple terms, consider the case of a small subdivision of say 74 lots. Table 4-5, below shows an interest calculation for a small development site at Austral in Liverpool Council area.

Table 4-5: Interest calculation 74 lot subdivision

ID	Description	Qty	Unit	Rate	Amount
1	Development Costs	74	lots	\$110,000	\$8,140,000
2	Land Acquisition Costs	3	ha	\$0	\$0
3	Total area acquired	7.413	acre	\$1,200,000	\$8,895,600
4	Conversion acre to ha	2.471	acre/ha	\$0	\$0
5	Subtotal				\$17,035,600
6	Interest rate		pa	7.00%	
7	Monthly interest on Subtotal				\$99,374

At the interest rate of 7%pa ^A the monthly interest can be estimated at \$100,000 per month at the end of a project. Interest rates will vary according to a number of factors for each developer and lender.

(Note A: adopted from the NAB business loan repayment calculator from the URL:

<http://campaigns.nab.com.au/backingbusiness/?psd=c&psa=1t1&cid=sem:p8581367655&psk=nab+commercial+loans&psn=GOOGLE> accessed 24 March 2017)

The \$100,000 per month interest can be approximated to \$3300 per day in interest costs. This daily rate will be used to demonstrate the costs of delay at various points in the development process.

4.2.10.1 CONSTRUCTION CERTIFICATE

Calibre has collected some data on the processing times of CC submissions with Accredited Certifiers and Councils, see Table 4-6 below.

Table 4-6: CC processing times

Description	CC by Accredited Certifier	CC by Council
Average elapsed time – days	29	75
Longest elapsed time - days	37	145

The projects for which this data were derived were projects approved in 2016 from a number of Councils in developing areas. For these projects, the CCs issued by Council on average were 46 days longer than by an Accredited Certifier.

At the time of the consideration of a CC, the developer has usually settled on the purchase of the land having waited the determination of the DA prior to settlement. There are of course other arrangements that are made which will only complicate this simple demonstration of the impact of delays. To estimate the financial impact of delays at CC time using

the 74 lot example above, the interest amount applicable would be for only the acquisition cost which is about half of the total cost of the development. So, adopting the daily interest cost of \$1650 per day, an estimate of the delay impact can be estimated.

Table 4-7: CC processing interest cost

Description	CC by Accredited Certifier	CC by Council
Average elapsed time – days	29	75
Interest cost to process CC on average	\$47,850	\$123,750
Extra over cost Council process over AC process		\$75,900
EO cost per lot of using a Council and not an AC		\$1025

It can be determined from Table 4-7 that the developer of a 74 lot parcel at Austral has to pay some “serious” money to obtain a CC. The extra over cost to have a Council process, based on average elapsed times, at \$75,900 is a significant cost.

Land & Property Information figures for the financial year 2016 indicates that 26,688 lots were created in NSW. The top 10 lot producing Councils in NSW produced 13,338 new lots. This is 50% of the total lots produced. Using the averages derived above, to gain an understanding of the impact of CC delays, an estimate for delays in CC approvals using Councils over Accredited Certifiers for subdivisions is $1025 \times 13,338 =$

\$13.7million

One could say this is only a small sum, however, it is just one of the components that contribute to the overall cost of housing on new land lots.

Clearly, something needs to be done to remove this delay. Is it:

- More staff to Councils?
- Increasing the accessibility of Accredited Certifiers?
- Increasing the skills, experience and capability of Councils to process CCs by requiring Council engineering staff to be Accredited Certifiers?
- Placing deemed approved time limits on CC processing rather than simply allowing appeals for deemed refusal after 28 days under s109K 3 (a) (ii)?
- Placing more onus on the designer to “get it right” in the first place and to then bear the consequences of getting it “wrong”?

4.2.10.2 REFERRALS TO GOVERNMENT AGENCIES

Another source of delay in starting civil engineering construction works are referrals to government agencies. Take for example where a Controlled Activity Approval (CAA) is required under the Water Management Act. The agency responsible for issuing the General Terms of Approval, as part of these terms, requires review of the CC drawings in order to issue the CAA. In effect this means that the agency is now the certifying authority as the CC cannot be issued until the CAA is issued. The application form for the CAA can be found at:

http://www.water.nsw.gov.au/_data/assets/pdf_file/0007/547054/application-controlled-activity-approval-waterfront-land.pdf

It is an extensive document containing information that is already presented to the consent authority as part of the development application.

One of the sources of delay for a CAA is the need for the developer to lodge two bank guarantees with the agency. One is released upon completion of the works, the other is released at the end of the maintenance period for the vegetation works which are required under the CAA. The source of the delay is twofold: one prior to the issue of the CC to enable works to start, the other at the completion of the works to obtain a sign off from the agency that the works have been completed. The fundamental question is: why is the State involved in works to a watercourse that is within land zoned for a particular land use. Surely this could revert to the Council with all the agency requirements being dealt with at the rezoning stage and then incorporated into any development consent. The development consent conditions can then be dealt with by the certifier and be given approval through the CC.

Other agencies that cause significant delays are the:

- RMS through its WAD process (Works Authorisation Deed) see details at the following link: <http://www.rms.nsw.gov.au/documents/projects/factsheet-development-process.pdf>
- Office of Environment and Heritage (OEH) with the Aboriginal heritage impact permits (AHIP) process, see <http://www.environment.nsw.gov.au/licences/applyforahip.htm> for details of this process

These are just examples of the agencies that require subsequent approvals after the issue of the development consent but prior to commencement of construction works. The proposed planning reforms do not address any of these delays all of which contribute to project costs and hence the affordability of housing which comes through the subdivision process.

4.2.10.3 SUBDIVISION CERTIFICATE

The final document required in order to register a plan of subdivision at Land & Property Information is the Subdivision Certificate (Sub Cert). This occurs when just about all of the developer's costs have been paid, so it is essential that the Sub Cert be considered and issued in a timely manner.

Calibre keeps a record of the processing time for Sub Certs at one of the large lot production Councils. These records indicate that the average time to process Sub Certs which have created a total of 331 lots in 16 recent applications is 10.6 weeks. The longest being 20.1 weeks and the quickest 5.3 weeks.

Using the costs derived from the 74 lots subdivision above, and the average processing time for this Council, the cost to the developer in interest would be $\$3300 \times 10.1 \times 7 = \$232,777$. This cost also has an impact on the affordability of land for housing construction. This Council is one of the top 10 lot production councils in NSW producing over 2000 lots in the year ending June 2016. The cost of the protracted consideration of subdivision certificates at this council is costing developers and hence new home buyers over \$8 million a year.

A ready solution to this issue is to permit the consideration and issue of Subdivision Certificates by Accredited Certifiers as has been suggested above in Section 4.2.9.

4.2.11 A RISK MANAGEMENT APPROACH

In the Planning section of this submission, the issue of Complying Development Certificates (CDC) was raised (see Section 3.1.7). A wider adoption of CDC is one way of assessing developments from a risk management perspective. In risk management issues are assessed using the likelihood and consequences approach. A matrix used in this approach is at Figure 4-2, below.

Consequence	Likelihood				
	Rare	Unlikely	Possible	Likely	Almost Certain
Extreme	L	M	H	H	H
Major	L	M	M	H	H
Serious	L	L	M	M	H
Moderate	L	L	L	M	M
Minor	L	L	L	L	M

Figure 4-2: Risk management matrix

Concepts that have been proven in risk management are used across various industries to examine and classify such things as commercial risk, safety risk, environmental risk, etc. These same concepts could be used to determine how development applications are assessed.

An example of assessing a category of a DA would be, say, a DA for a carport. What is the likelihood of an adverse environmental outcome using the matrix above? It is possible that there could be an adverse impact. What is the consequence? Using the matrix above the consequence would be minor or moderate. In either case the assessed risk from the matrix is LOW. Therefore a low risk development assessment should be used to assess such an application.

All development can be quickly assessed using such an approach and the planning reforms could give guidance to consent authorities about what is Low, Moderate and High risk developments. Of course, as the environmental risk increases so should the rigour of the development assessment process increase. A carport does not need to be assessed in the same way as a high rise multi-use tower, which would under risk management regime be a HIGH risk.

This risk management approach is similar to the triage concept used in emergency departments of hospitals, where patients are assessed according to a five-point scale to prioritise patients. A category from one to five is allocated according to the maximum time the Triage Nurse determines the patient can wait for emergency care.

This is an area where the planning system can be improved to assist in making housing more affordable by using appropriate DA assessment rigour for the level of environmental risk associated with a development.

4.2.12 THE PROBLEM DEFINED

There are a number of issues which are creating problems and delays in the certification process which are outlined in the preceding sections of this submission. Clearly there is an opportunity to reform the certification process for subdivisions and civil engineering infrastructure to:

- Add certainty to the process
- Reduce time frames for consideration and approval of certificates

- Reduce delays in the processing of applications
- Reduce costs to developers that would assist in increasing housing affordability
- Just make the process more sensible



Figure 4-3: Water quality facilities at Harrington Grove

4.3 COMMENTS ON SCHEDULE 6

Table 4-8: Comments on Schedule 6 of public consultation draft

ID	Location in Schedule 6	Issue	Comment
1.	6.1	Building work	Building not defined. Suggest that classifications used in the National Construction Code be adopted
2.	6.1	Principal certifier	What are the duties of the Principal Certifier and how are these different to the Accredited Certifier?
3.	6.1	Principal contractor	Is only defined for building work and not subdivision work
4.	6.1	Subdivision work	Definition is too loose. Need to define what is Subdivision Work better to include all facets of work which are needed for the construction of a subdivision or any civil engineering infrastructure work required to support a new subdivision or building development
5.	6.2 (3) (b)	Opening of a public road	All subdivisions open public roads as public roads are required to give access to any new lots created in a Plan of Subdivision. There are also occasions when a subdivision occurs purely to create a public road.
6.	6.3 (1) (b)	Subdivision work	Need to expand the definition of subdivision work to encompass civil engineering infrastructure work that is approved by a DA but does not require the creation of new lots in a subdivision – this is covered in the preceding Section of this submission
7.	6.4	Kinds of certificates	Why do we need to create a new certificate called the subdivision works certificate – there is no issue with calling it a Construction Certificate. Consideration should be given to two CC types: <ul style="list-style-type: none"> • CC – Building • CC – Civil Engineering or Civils or Infrastructure That would address all the types of works required for developments. Probably the use of the term CC – Civils would be an easy term to adopt as that is really what subdivision works are

ID	Location in Schedule 6	Issue	Comment
8.	6.4 (e) (i)	Note	Unclear what is meant – “in certain cases”
9.	6.5 (a)	Principal Certifier	Why restrict the issue of a CC to a Principal Certifier? This is not required under the current EP&A Act and does not cause any problems
10.	6.5 (b)	Carrying out of inspections	Why is this restricted to the Principal Certifier or with the permission of the PC? Uncertain why this change is proposed and what benefit it would be to the progress of developments
11.	6.5 (c)	Issuing Subdivision Certificates	Should not be restricted to only Councils for the reasons established in Section 4.2 above
12.	6.12 (5)	Crown building work	Why is Crown building work in a section dealing with subdivision work?
13.	6.13	Subdivision works certificate	A new concept from the current Act that does not assist with the inadequacies of the current Act. If a new concept is to be introduced it should be for Civil Engineering Works not just subdivision works, this would cover all types of development that requires civil engineering works
14.	6.13 (2) (a)	Subdivision Works Certificate NOT required	In the case of civil engineering works (as opposed to subdivision works), if they are required under a Complying Development Certificate then they should still be subject to a CC unless the person issuing the CDC is accredited to issues a CC for the civil engineering works
15.	6.13 (2) (b)	Crown building works	Seems inconsistent to include references to Building Works in a section dealing with civil engineering works
16.	6.14 (1)	Restriction on SW certificate	Also applies to civil engineering works certificate not just to subdivision works
17.	6.14 (2)	Works Certificate of no effect	How are works that are commenced prior to CC approved? There are many cases where works are commenced, due to delays in the approvals process prior to the CC being issued. There needs to be a mechanism to approve these works as mostly they are done as if a valid approval (CC) has been issued. If the works certificate is of no effect – what happens next?
18.	6.15 (2)	Agreement if works not complete	Is this agreement to be in writing?
19.	6.28 (1)	Crown activity	New term “work” introduced at (b). Does this mean civil engineering work, subdivision work, some other type of work? Too vague and therefore open to interpretation.

ID	Location in Schedule 6	Issue	Comment
20.	6.29 (1)	Certifiers may be satisfied	This is too vague in that the regulations <i>may</i> provide. However, there needs to be a statement that in the absence of written requirements of the Council or consent authority if a certifier is satisfied then that matter has been complied with, or words to a similar effect.
21.	6.30 (2)	Conditions precedent	Why not say; "This section only applies to certificates issued by a council". If that is what the clause is trying to say. Simplify the wording.
22.	6.31 (1)	Non-compliance	A principal certifier MUST issue a notice in writing, however, where a council is the PC it only MAY issue a notice. Why not have the same for a PC whether in council or not?
23.	6.33 (d)	Conditions of certificates	By this clause are conditions now being permitted on Construction Certificates for civil engineering works (subdivision works)?

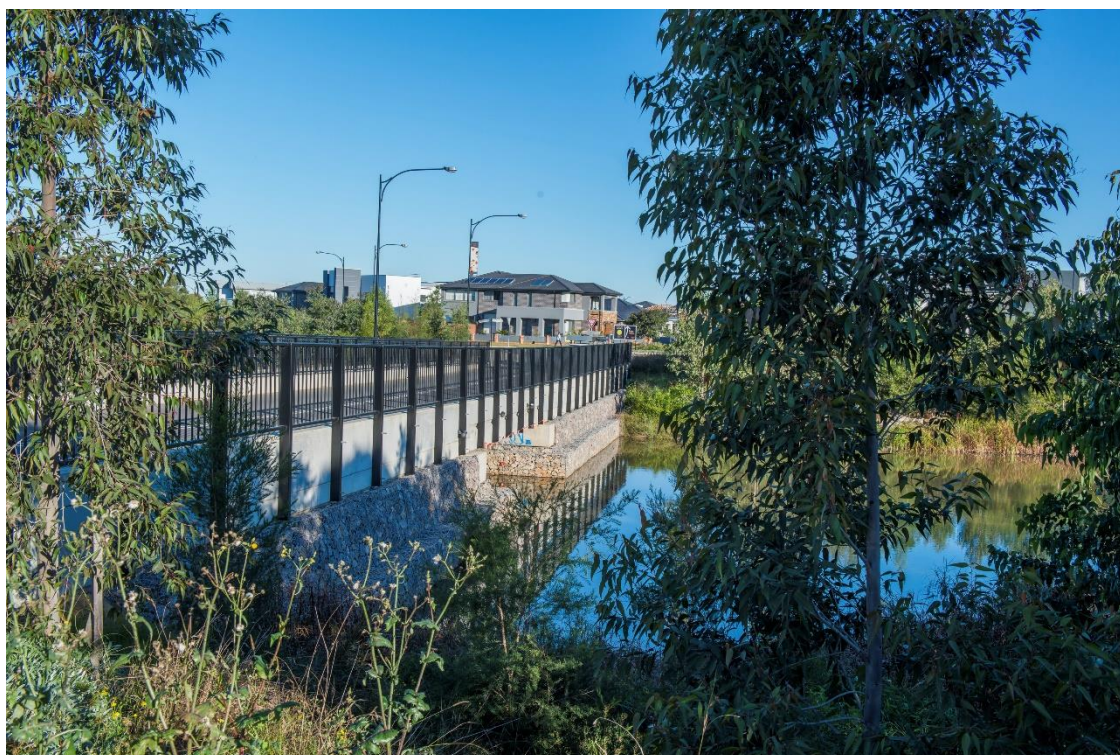


Figure 4-4: Crossing a water quality facility

5 SUGGESTED CHANGES

- 1) Public exhibition of proposed developments should only occur for a prescribed list of developments in a Council's approval policy that may be considered to have an impact because of the proposed development such as residential flat buildings and shopping centres
- 2) The proposal for reasons to support decisions as well as the reasons for the imposition of conditions is supported
- 3) This process of unnecessary notification of application should be removed when agreement has been reached and adjoining owners have been consulted and agreed on an application. This should suffice as an incentive for applications to remove unnecessary consultations
- 4) A "facilitation team" to attempt to resolve concurrences and comments from agencies is considered "not going to happen" if the Department is not sufficiently resourced to be able to follow up with other agencies
- 5) In order to ensure timely approvals it is considered necessary to amend and remove the numerous concurrences and referrals that exist for development approvals
- 6) Unapproved works to be approved with the lodgement of an application for development and not through a modification process
- 7) Act to be amended to enable conditions to be imposed on a Construction Certificate. A Construction Certificate needs to demonstrate consistency with the consent conditions. As such, being able to impose conditions on a Construction Certificate would remove the misuse of modification applications
- 8) Complying development is "as of right" development, subject to compliance with the standards and there should be no assessment or interpretation as to whether complying development should apply or not. Complying development should be able to be issued by either an Accredited Certifier employed by a Council or an Accredited Certifier not employed by the Council
- 9) Complying development should be expanded. Currently if a simple straightforward DA does not meet the requirements for a Complying Development Certificate it is treated in exactly the same manner as a large complex high impact development and does through the same procedures, consultation and referrals. This slows down simple applications such as a new dwelling on a knock-down/re-build proposal, or an Ads and Alts in a bushfire area, and other like applications.
- 10) Use appropriate DA assessment rigour according to the level of environmental risk associated with a development using risk management concepts to categorise development types
- 11) The reasons for imposition of conditions will greatly assist in interpreting the conditions of consent and should enable a certifier to issue a construction certificate should it be demonstrated that it is consistent with the approval
- 12) Site investigations for a subdivision should be under the Exempt Development category of the Act
- 13) The blatant disregard by some Councils of the current legislation which allows Accredited Certifiers to issue Construction Certificates needs to be corrected in the amendments
- 14) Subdivision Certificates need to be able to be issued by either Council or Accredited Certifiers
- 15) Definition of subdivision works to be clarified to ensure all civil engineering infrastructure works are covered in the definition whether they relate to subdivisions or other types of developments
- 16) If subdivision works definition is not expanded as above, then allow for Certifiers accredited in civil engineering to issue Construction Certificates for civil engineering infrastructure whether for a subdivision or for other types of development where civil engineering works are required

- 17) Allow Accredited Certifiers to issue Construction Certificates for works in existing public roads where the works are required as a conditions of consent including classified roads
- 18) Require council officers to be accredited certifiers for all certification activities not just building certification
- 19) Require all councils to publish standards for civil engineering design and construction and where there is no published standard allow Accredited Certifiers to adopt a standard
- 20) Where there is doubt about a civil engineering standard allow the Accredited Certifier to be satisfied to that matter based upon experience and other prevailing standards and industry practice
- 21) Reduce the detailed information required by some Councils at DA phase
- 22) Specify that once a certifier has carried out an initial review further items cannot be added at the second review. The second review is to check that all items raised in the initial review have been satisfied. Of course if the issues raised in the initial review have not been satisfied then further information should be rightly be required
- 23) Set periods for initial review of 21 calendar days
- 24) Set periods for second review and issue of the construction certificate at 14 calendar days
- 25) If the set periods are not met then a Deemed Approval is granted
- 26) Consideration of subdivision certificates to be restricted to the conditions of consent and not extraneous additional administrative matters determined apart from the consent by a council
- 27) The requirements of State agencies to be confined to the re-zoning of land stage or to the development consent. Subsequent referrals to agencies post DA consent to be removed and left to the technical review by the Accredited Certifier (whether that certifier is employed by a Council or not)
- 28) Clarify the role of the Principal Certifier
- 29) Have two types of Construction Certificates: one for Building Work and one for Civil Work
- 30) Inspections to be endorsed by an Accredited Certifier but not necessarily be carried out by the Accredited Certifier. This leaves professional discretion as to whether the Accredited Certifier inspects or a competent surveillance officer inspects who reports to the Accredited Certifier (This is the practice with Council inspections at numbers of councils)
- 31) Remove the concept of Subdivision Works Certificate and replace with Construction Certificate Civil Work
- 32) Where a Complying Development Certificate requires works a Construction Certificate still should be required
- 33) Any agreement regarding the satisfaction or securing of works between the developer and the council is to be in writing
- 34) Where non-compliance is detected then the Principal Certifier whether a council or not must issue a notice on the developer

6 ABOUT CALIBRE CONSULTING

Calibre Consulting is a leading provider of professional infrastructure and built environment solutions across a wide range of markets. From our origins as a structural engineering firm in Melbourne in 1953, we have grown and diversified to offer a comprehensive range of services across the Asia-Pacific region. We now have over 650 employees in offices throughout Australia and New Zealand, as well as in Singapore.

We are a member company of Calibre Group. Calibre Group is a leading diversified provider of engineering, consulting, project delivery, construction and asset management services to the resources and infrastructure markets in Australia and select international markets

Our portfolio of services includes civil, structural and transport engineering, water and environmental design, planning and surveying, and management services. Core services are enhanced by specialist teams delivering project management, construction safety audits and contract administration.

Calibre operates extensively in the urban development industry in NSW and across Australia. With its clients, Calibre is delivering key urban projects, in NSW, including:

- Oran Park Town for Greenfields Development Corporation and UrbanGrowth NSW
- Catherine Park for Lady Mary Fairfax
- Harrington Grove for Lady Mary Fairfax
- The Hills of Carmel at Box Hill for Mogul Stud and Jundu
- Wentworth Point for UrbanGrowth NSW
- Sydney Business Park, Richmond Road, Marsden Park for Sydney Business Park
- Blacktown Surplus Lands for Blacktown City Council
- Blacktown Basins for Blacktown City Council
- Box Hill Arterial Roads Upgrades for The Hills Shire Council

In addition to these major urban projects, Calibre also provides services to many other developers of urban projects, both private sector and public sector clients. As such, Calibre is in a strong position to be able to bring a practitioner's view to the review of the planning legislation.



Figure 6-1: Sydney Business Park

6.1 THE AUTHORS

6.1.1 PETER LEE



Peter Lee currently heads the Planning division of Calibre Consulting. He has over thirty years' experience as a town planner. His wide ranging experience includes project management of multi-disciplinary teams for rezoning, structure planning, due diligence, preparation of master plans, preparation of planning policy for government authorities and land owners, stakeholder and community consultation, statutory planning advice and legal appeals.

Peter was Planning Manager with The Hills Shire Council (previously Baulkham Hills Council) and was responsible for the approval and delivery of major projects including the Council's development of a library, community facility and residential development at Castle Hill as well as the Rouse Hill Regional Centre.

Peter is a member of the Urban Development Institute of Australia – NSW Planning Committee.

In his role as Manager Planning at Calibre, Peter has recently secured a number of significant re-zonings for clients at the Norwest Business Park, including multi-storey residential and commercial developments around the Norwest Station Precinct. In addition he is managing the planning aspects of a number of key residential communities across north-west and south-west release areas.

6.1.2 STUART GREEN



Stuart Green is a Fellow of the Institution of Engineers Australia and a Chartered Professional Engineer. He has worked the whole of his career since graduating in 1984 as a civil engineer in the urban development industry.

He has worked for seven years in local government where he was involved in development assessment and compliance for all aspects of developments, not just engineering works. As Manager of Development Services in Blacktown City, he was instrumental in the establishment of the Development Services Unit.

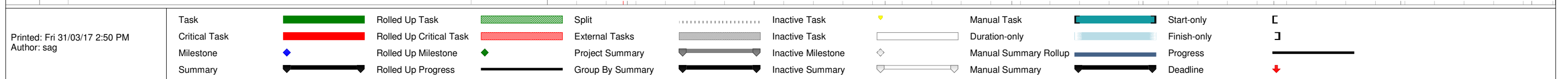
Since leaving local government in 1993, Stuart has been the consultant project director and project manager for many urban development projects for both private and public sector clients. He has also worked as a project developer and an

Accredited Certifier under the provisions of the Environmental Planning & Assessment Act.

Stuart is currently the Manager of the Baulkham Hills office of Calibre Consulting where he leads a team of 100 staff delivering projects for clients in the disciplines of Planning, Survey, Project Management, Water & Environment, Civil Design, Water Servicing Coordination for new Sydney Water assets and construction phase professional services. He has recently expanded the services of Calibre to project risk management. In providing these services Stuart assists clients in understanding their project risks, determining treatments for the risks and allocating responsibilities through risk workshops.

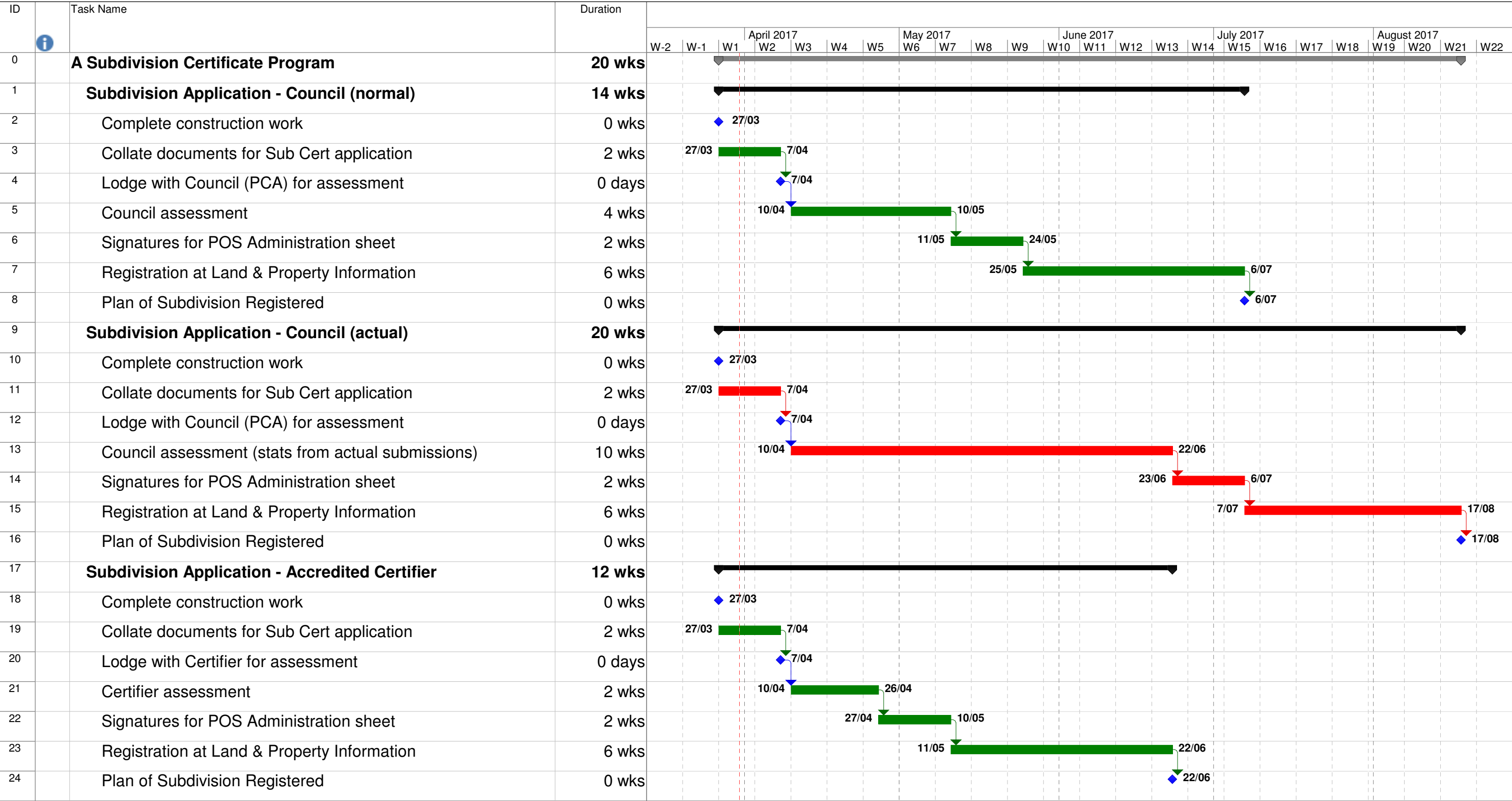
APPENDICES

APPENDIX A AN INTEGRATED DEVELOPMENT PROGRAM



APPENDIX B SUBDIVISION CERTIFICATE PROGRAM

A Subdivision Certificate Program



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Author: sag

Task

Critical Task

Milestone

Summary

Rolled Up Task

Rolled Up Critical Task

Rolled Up Milestone

Rolled Up Progress

Split

External Tasks

Project Summary

Group By Summary

Inactive Task

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

Progress

Deadline

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