

LOGAN CITY COUNCIL DEVELOPMENT ASSESSMENT

RiskSmart



PLANNING

Logan Planning Scheme 2015 Accreditation Model and Application Kit

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1.0 Introduction

RiskSmart has been developed in an effort to address a number of issues, both internally and externally, present in the current assessment process. These issues include:

- lengthy assessment timeframes for relatively simple applications;
- a need to foster a better relationship between Council and external consultants;
- staffing issues during peak times including high staff turnover and stressful working environment;
- incomplete and/or incorrect application information quality; and
- inconsistent and unclear Council requirements for development industry.

RiskSmart Assessment allows suitably qualified professionals to assess and set conditions for specific development applications as nominated in this Accreditation Kit. RiskSmart by professional consultants relies on two specific processes to be in place to ensure its efficiency. These processes are as follows:

- The development of clear standards for all nominated works based on the planning scheme and its associated benchmarks, and adopted Council Policies; and
- Creation of a system and process wherein Council could reasonably rely on a suitably qualified consultant’s assessment of a development application to make a decision.

The aim of RiskSmart is to reduce timeframes and impacts on industry and Council, and to increase accountability and utilisation of professional consultants.

2.0 Description of Accreditation

The accreditation process, coupled with the clear standards and criteria, seeks to implement a more efficient assessment of nominated development applications.

The accreditation of professional consultants and consultancies is a voluntary process of being certified as meeting minimum requirements designated by an accrediting system. It provides a mechanism for

Council to be able to reasonably rely on a consultant's professional qualifications and experience. Its aim is to ensure the integrity of the process and qualify only consultants who, by reason of their expertise, experience, integrity and honesty can be relied upon to properly use the RiskSmart process and to provide relevant documentation including all permits and associated reports and drawings to Council.

Applicants lodging in this way are agreeing to follow and abide by a procedure laid down by Council. Random auditing will be undertaken to assess and monitor the competence of accredited professionals.

To utilise such a process requires experience with lodging competent applications, knowledge of the relevant planning legislation, familiarity with the Council's planning schemes and policies and a high level of reliability in the consultant by the Council.

To undertake RiskSmart Assessment, accreditation for both the individual and the firm/consultancy are required. It is critical that the individual has demonstrated the required level of expertise and experience. Equally the firm/consultancy must demonstrate they hold the required insurance policy, as it is the firm that will ultimately take responsibility for rectifying any breaches or mistakes. Where an accredited consultant moves from one firm to another, the individual consultant is not required to reapply for accreditation provided they are moving from one accredited consultancy to another.

3.0 The Accreditation Kit

The Accreditation Kit contains all the relevant material to assist **consultants** and **consultancies** in obtaining accreditation and outlines Council's expectations. Outlined below are the documents contained in the Accreditation Kit:

- Accreditation Application Form for Consultants and Consultancy;
- Guideline for an 'Accredited Consultant/Consultancy';
- Deed of Agreement for Accredited Consultant; and
- Deed of Agreement for Accredited Consultancy.

The Accreditation Kit adopted for the RiskSmart Assessment process is at Appendix A.

Accreditation Application Form

The ability to qualify as an 'Accredited Consultancy' is available to all relevant competitors provided they meet the relevant specified criteria. The qualifications/experience includes criteria within the following categories:

1. *Professional and Public Indemnity Insurance.* Each 'Accredited Consultancy' must have Professional and Public Indemnity Insurance to cover the provision of this service. Insurance demonstrates that the organisation and its employed/contracted consultants have met professional requirements to obtain insurance and have a business enterprise that is sufficiently robust to require financial protection. Additionally, Council may under certain circumstances, obtain access to this insurance if the individual (or organisation) were to engage in fraudulent or misleading activities.
2. *Demonstrated knowledge* by the consultant of the relevant planning scheme and provisions held therein as well as the relevant planning legislation and other legislation. This may be achieved through providing evidence of lodging a significant number of relevant applications to the Council, in a recent timeframe that demonstrates a detailed understanding of the relevant requirements and processes relating to the assessment of development applications. This includes, but is not limited to:
 - Demonstrated identification and application of the correct benchmarks and policies associated with the set number of applications;
 - Demonstrated identification of referral agencies, if any, for these set number of applications;
 - Demonstrated identification of the correct Level of Assessment for these set number of applications;

Guideline for an 'Accredited Consultant/Consultancy'

In order to ensure compliance with the requirements of the accreditation process, guidelines have been developed that clearly articulate the roles and responsibilities of the 'Accredited Consultant/Consultancy' and any other interested party. It is recognised that both parties (Council and the 'Accredited Consultant/Consultancy') must possess a detailed understanding of the process to guarantee its success.

The Guideline for an 'Accredited Consultant/Consultancy' clearly outlines a step-by-step process which:

- Identifies the requirements for the lodgement of an application under RiskSmart;
- Identifies the timeframe or indicative timeframe by which Council will issue an approval having relied on the accreditation;
- Identifies a probationary period; and
- Identifies an auditing process.

Deed of Agreement for Accredited Consultant and Deed of Agreement for Accredited Consultancy

The 'Accredited Consultant/Consultancy' must agree to the terms and conditions of the process before Council can reasonably rely on their expert advice. This is achieved by documenting the roles and responsibilities of both the 'Accredited Consultant/Consultancy' and the Council, and requiring a signature of acceptance of these terms. The documents that formalise this arrangement for consultants and consultancies are titled the Deed of Agreement for Accredited Consultant and Deed of Agreement for Accredited Consultancy (the deeds) and are attached in the Accreditation Kit.

The roles and responsibilities of each party participating in this accreditation process are clearly articulated within these two deeds. This insures that all have a clear understanding of their role in the process and have no recourse for not following the rules set down through this process. Any non-compliance with the criteria and information provided by the Council may be grounds for removal of accreditation for both the consultant and the consultancy they represent. Council may also undertake proceedings to have any errors by the consultant rectified.

The deeds are legally binding. It is the basis on which Council will rely on the expert advice provided by the consultant.

4.0 Qualifying Accredited Consultants and Consultancies

Meeting the accepted criteria to qualify as an 'Accredited Consultant and Consultancy'

The consultant and Consultancy is required to submit an application to Council supported by documentation demonstrating how they meet the criteria outlined by Council. If a consultant and consultancy achieves the acceptable criteria for accreditation, that consultant and consultancy will become accredited and will be able to participate in the RiskSmart process.

Council may outline responsibilities and impose conditions on the accreditation of a consultant and/or consultancy. If the 'Accredited Consultant or Consultancy' breaches the terms of the accreditation, Council may remove accreditation depending on the severity of the breach.

The consultant and Consultancy are required to provide a minimum of two example applications of the development type being applied for. The list of development types is provided below. Each example application must have been lodged and approved in the Logan City Council area within the last 2 years of applying for accreditation.

Development Types are:

- Residential - House
- Residential - Other (includes mixed use developments incorporating residential component)
- Industry
- Reconfiguring a lot (within any zone)
- Commercial/retail/Other (also includes mixed use developments incorporating residential component and other uses not listed here).

This accreditation may only apply to the specific development type (i.e. Industry, Residential etc) that the applicant has requested accreditation for, and does not allow the consultant to assess development applications under RiskSmart in which they have not demonstrated the necessary competence. For example, a particular applicant may provide a number of compliant development applications for residential development but may not have any experience with retail or commercial

development applications in Logan City Council. In this case, the applicant should be accredited for applications concerning residential development type but not retail development type.

Should the applicant not be able to provide sufficient quantum of example applications of any given development type, RiskSmart accreditation with any other Queensland local authority may be given some weight by Logan City Council. The amount of weight given will depend on the applicants experience and reference from the other Queensland local authority(s).

If the consultant/consultancy only wish to be accredited for specific uses or development types, this should be clearly stated in the accreditation kit and a covering letter submitted to council.

Agreeing to be bound to the guidelines and requirements of the accrediting body

The 'Accredited Consultant and Consultancy' must sign the terms and conditions applied by the Council in the deeds.

5.0 Monitoring the Process

Monitoring the activity of its 'Accredited Consultant and Consultancy'

In order to ensure that the 'Accredited Consultant and Consultancy' are complying with requirements of the Council, a post-approval and post-construction audit process may be undertaken. This post-approval and post-construction audit allows Council to determine how well the process is working, any inconsistencies or issues with their criteria or process, and whether Accredited Consultants are breaching the requirements of the process.

Disciplinary action for misdemeanours

Any breach is grounds for the Council to undertake a detailed assessment of all development applications lodged by the consultant and the consultancy and thus for their removal from the list of 'Accredited Consultants and Consultancies.' Council may however, at their discretion, consider issues such as the severity of the alleged breach, the responsiveness of the consultant

to the breach and history of the consultant and the consultancy they represent in determining an appropriate course of action. In these cases, the severity of the breach will dictate the disciplinary action to be taken. Below are four primary disciplinary actions that a Council may take in order of severity (Note that the decision of what action to take resides with the Council):

- Notice to applicant for the first discrepancy;
- Return to a probation period for a set number of applications and subject to an extended approval timeframe;
- Removing the ability to lodge under RiskSmart for a set period of time (suspension); and
- Cancellation of accreditation of the 'Accredited Consultant and Consultancy'.

Additionally, Council may, under certain circumstances, obtain access to the insurance if the individual (or consultancy) were to engage in fraudulent or misleading activities.

Note that all disciplinary action(s) that are imposed on a particular consultant will also be imposed on the consultancy they represent. The expectation is that the participating consultancy develops their own quality assurance process regarding RiskSmart.

Glossary

Accredited Consultant

A consultant that has demonstrated adequate competency to be considered 'accredited' for the purposes of this accreditation process, the accreditation is valid for an individual consultant whilst under the employment of their current consultancy. In the event of the consultant ceasing employment with the accredited consultancy the accreditation shall be suspended or removed unless the consultant is moving to a consultancy that also has the required accreditation.

Accredited Consultancy

A consultancy that has demonstrated sufficient insurances to be considered 'accredited' for the purposes of this accreditation process, the accreditation is valid for a consultancy whilst an accredited consultant is under their employment. In the event of the consultant ceasing employment with the accredited consultancy or the accredited consultancy's inability to demonstrate sufficient insurance, the accreditation shall be suspended or removed.

PA

Planning Act 2016 (formerly the Sustainable Planning Act 2009).

Relevant Legislation

Queensland

Planning Act 2016 (Qld) (PA)

Sustainable Planning Act 2009 (Qld) (SPA)

Local Government Act 1993 (Qld) (LGA)

Any other future Queensland Planning legislation

Available for viewing at: <http://www.legislation.qld.gov.au>

Appendix A: Accreditation Kit

Note: a Consultant applying for accreditation is required to complete and submit the following four (4) forms:

- A1 Accreditation Application Form
- A2 Guideline for Accredited Consultant/Consultancy
- A3 Deed of Agreement for Accreditation for consultant
- A4 Deed of Agreement for Accreditation for consultancy

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RiskSmart Planning Accreditation Kit

Form A1 Accreditation Application Form

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1 Consultancy

Name of Consultancy

Nominated Development Type (industrial, commercial/retail, residential) applying for (list all):

Name of Director:

Signature of Director:

Date

To qualify for Accreditation for RiskSmart, the following must be complied with for the term of the accreditation:

1. Professional Indemnity Insurance to the value of \$1,000,000 from an insurer and on terms acceptable to Council;
2. Public Liability Insurance to the value of \$5,000,000 from an insurer and on terms acceptable to Council;
3. Any other insurance required by law, from an insurer and on terms acceptable to Council; and
4. The insurance policies held and maintained by the consultancy must cover the acts or omissions of the individual consultant.

The following documentation must be submitted to Council in support of an application for accreditation:

1. A copy of the insurance policy outlining the insured amount, policy provider, policy number, date of commencement and expiry date of policy; and
2. Signed Terms and Conditions of Accreditation (TCA).

1 Consultant

Name of Consultant

Nominated Development Type (industrial, commercial/retail, residential, reconfiguring a lot) applying for (list all):

Name of Consultant:

Signature of Consultant:

Date

To qualify for Accreditation for RiskSmart, the following must be submitted and complied with:

1. An applicant should submit a covering letter which, in addition to identifying example applications, explicitly outlines the following:
 - Applicable Council benchmarks/standards/policies;
 - Applicable State Planning Policies;
 - Applicable Australian Standards;
 - State Referral Agencies - who and what trigger?;
 - A summary outline of the proposal and what the main or significant issues were with the application and how were they resolved; and
 - Outline what all the necessary supporting information and reports that were required to approve the development.
 - Resumes detailing relevant experience and qualifications of assigned personnel
 - Signed Terms and Conditions of Accreditation (TCA).

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2. Provide examples of at least 2 applications for each Development Type being applied for, from each of the various development types listed below. Each example application must have been lodged and approved in the Logan City Council area within the last 2 years of applying for accreditation.

Development Types are:

- Residential - House
- Residential - Other (includes mixed use developments incorporating residential component)
- Industry
- Reconfiguring a lot (within any zone)
- Commercial/retail/Other (also includes mixed use developments incorporating residential component and other uses not listed here).

Note: If the consultant/consultancy only wish to be accredited for specific uses or development types, this should be clearly stated in the accreditation kit and a covering letter submitted to council.

Process Following Accreditation

An initial one-on-one session with the Council officer coordinating RiskSmart Assessment will occur following accreditation to:

- Introduce the Accredited Consultant(s) to the Standards and Criteria;
- Reaffirm general expectations; and
- Discuss queries from the Accredited Consultant(s).

It is the responsibility of the Accredited Consultant, following assessment of an application, to submit the necessary information to Council to allow issuing of development permits. Council will endeavour to issue a Development Permit within 48 hours of lodgement.

Contacts

Council's Development Assessment Branch may be contacted on the details below:

Telephone: (07) 3412 5269

Email: darisksmart@logan.qld.gov.au

RiskSmart standards and criteria and additional information are available on Council's website: logan.qld.gov.au

Council use only**DM#9444438**

Date Received

Name of Receiving officer

Development Assessment Enquiry Counter

Phone: (07) 3412 5269

Email: darisksmart@logan.qld.gov.au

Address: Logan City Council
PO Box 3226
Logan City DC QLD 4114

Logan Planning Scheme 2015

RiskSmart Planning Accreditation Kit Form A2 Guidelines for Accredited Consultant/ Consultancy

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The purpose of this practice guideline is to inform the Accredited Consultant/Consultancy of the operational nature of RiskSmart and outline general expectations.

This approach offers an opportunity to advance partnerships, assist in delivering services to the community, and provide an innovative approach to service delivery. The process offers a means of fostering a stronger relationship with industry colleagues by quickly deciding applications considered straightforward. It achieves this by effectively allowing a Council to rely upon information from an Accredited Consultant/Consultancy, whilst retaining the decision-making powers, thus avoiding any duplication of effort. In terms of benefits to industry, it is envisaged that the application assessment period will be significantly reduced, and the Accredited Consultant/Consultancy is more closely involved in the development process.

The Accredited Consultant/Consultancy is responsible for the following:

- Preparing reports that addresses the relevant policies/standards/benchmarks;
- Collating all necessary specialist reports to support the proposal;
- Providing any necessary Referral Agency responses;
- Providing all necessary standard approval conditions;
- Lodging application with Council;
- RiskSmart Application Checklist.

The Accredited Consultant/Consultancy will **not** be responsible for the following:

- Issuing Development Permits.

Council will endeavour to issue an Development Permit within five business days of lodgement.

Note: RiskSmart transfers responsibility to the Accredited Consultant/Consultancy to ensure supporting specialist reports are accurate and contain sufficient detail as would otherwise be required by Council for review. If issues arise in future, Council may take legal steps against the Accredited Consultant/Consultancy to rectify the issue or matter.

Both the Consultant and Consultancy must sign a Deed of Agreement with Council, which confirms the roles and responsibilities of the Accredited Consultant(s) and is the basis on which Council and the Accredited Consultant/Consultancy will participate in the RiskSmart process.

The *RiskSmart Assessment* process is outlined below:

Stage 1 – Accredited Consultants

- Consultant and Consultancy complete Accreditation Kit including Deeds of Agreement;
- Council nominates conditions on an approval or by agreement to confirm the certification of the Accredited RiskSmart Consultant.

Stage 2 – Design and Assessment

- Pre-lodgement meeting or discussions are to occur between Accredited Consultants and Council if and when required;
- Accredited Consultant prepares planning application reports and conditions;
- The Accredited Consultant has contacted and received advice and or conditions from Water Infrastructure;
- If the application triggers a referral to an External Agency in accordance with the regulation, it is the Accredited Consultant/Consultancy's responsibility to liaise with and obtain letters of requirements and incorporate any subsequent conditions;
- Accredited Consultant/Consultancy lodges complete and assessed application with Council;
- Council will endeavour to decide the application within five business days upon receiving an application that meets the criteria outlined in the relevant checksheet for the proposed use.

Probation Program

A new Accredited Consultant/Consultancy will be on probation for the first three (3) applications lodged as part of the RiskSmart Assessment process. Under probation, Council will undertake an audit of the application prior to its approval. The probation program is to provide Council and the consultant with an understanding of the RiskSmart Assessment process.

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Page 2 of 2**Auditing**

Auditing will be performed by Council, at the Council's discretion, to assess the adequacy of the process and the performance of the individual consultants;

Council may contact the Accredited Consultant/Consultancy during an audit process for information or assistance.

Miscellaneous

Any omissions, errors or misdirections will be discussed with the consultant and are grounds for removal from the RiskSmart process. Council may also undertake legal steps to rectify said errors or misdirections.

All standard templates, forms, criteria and conditions will be provided to an Accredited Consultant/Consultancy and can also be obtained from the Development Assessment Branch.

Declaration

I, [insert name here]

employed by [insert name of employer/company here including ACN]

have read the above and agree to adhere to these guidelines.

Signature

Date

Council use only**DM#9444438**

Date Received

Name of Receiving officer

Development Assessment Enquiry Counter**Phone:** (07) 3412 5269**Email:** darisksmart@logan.qld.gov.au

Address: Logan City Council
PO Box 3226
Logan City DC QLD 4114

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Made as a Deed

This deed is made the day of
20 ,

between:

Logan City Council
Administration Centre
150 Wembley Road, Logan Central
PO Box 3226, Logan City DC, Qld 4114
("Logan City Council")

and:

[insert Individual's Name],

[insert Individual's address],

Postcode

an employee or contractor of [Insert name of accredited consultancy]

[insert ACN of accredited consultancy]

("Accredited Consultant")

in relation to the accredited consultant performing RiskSmart assessment services for Logan City Council.

Recitals

- The Accredited Consultant as an employee or contractor of the Accredited Consultancy wishes to provide RiskSmart Assessment Services under the RiskSmart Assessment Process to Logan City Council.
- The Logan City Council requires the Accredited Consultant to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- The process and services relevant to RiskSmart are set out in the Guidelines for Accredited Consultant/Consultancy.
- The Development Assessment Manager is authorised to sign this deed on behalf of Logan City Council.

Terms and conditions

1. Definitions and Interpretation

The following terms shall have the following meaning for the purpose of this Deed:

'Accredited Consultant' is the individual considered 'accredited' for the purposes of RiskSmart Assessment. The individual consultant must demonstrate the required level of expertise and experience to obtain accreditation.

'Accredited Consultancy' means the body corporate named in the Accreditation Application Form completed by the Accredited Consultant for the Accreditation Process.

'Accreditation Process' means the process and assessment procedures for becoming an Accredited Consultant, as specified by the Logan City Council and which has been completed by the Accredited Consultancy.

'Authorised User' has the meaning given to that term by the *Trade Marks Act 1995* (Cth)

'Confidential Information' means the confidential information of the Logan City Council and includes any documents or information provided by the Logan City Council: (a) that are marked as confidential; (b) that are provided by the Logan City Council under circumstances or communications that are confidential; or (c) which the Accredited Consultant ought to know are confidential but (in respect of any of the information in (a), (b) and (c) of this definition), does not include any information that is or becomes part of the public domain, other than as a result of a breach of an obligation of confidence or any information that is required to be disclosed by law.

'Deed' means this Accreditation Deed.

PLEASE NOTE: Logan City Council is collecting your business details for development application purposes only. Logan City Council will use this information to process the application of your proposed development and this information will only be accessed by employees of Logan City Council for Council related business activities only. Your information will not be given to any other person or agency unless you have given us permission or we are required by law.

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‘Guidelines for Accredited Consultant/Consultancy’ means the guidelines titled “Guidelines for Accredited Consultant/Consultancy” which are attached to this Deed, as amended by the Logan City Council from time to time.

‘Intellectual Property Rights’ means all intellectual and industrial property rights and interests in Australia and throughout the world, whether registered or unregistered and whether created before on or after the date of the Deed, including trademarks, designs patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how trade secrets and all other intellectual property rights.

‘List of Accredited Consultants’ means the list of Accredited Consultants as from time to time may be published by the Logan City Council and in the manner of publication or disclosure determined by Logan City Council.

‘Development application’ has the same meaning as given to it under the *Planning Act 2016* (Qld).

‘RiskSmart’ means the Third Party Accredited Consultant Development Assessment services, which the Logan City Council specifies from time to time including, but not limited to, preparation and lodgement of RiskSmart compliant Development applications up to ‘on maintenance’.

‘Term’ means the term of this Deed, as determined by clause 5.1.

2. Accredited Consultant's obligations

- 2.1 The Accredited Consultant hereby represents and warrants to the Logan City Council, and it is a condition of this Deed that the Accredited Consultant:
- 2.1.1 provided information to the Logan City Council during the Accreditation Process that was true, accurate and correct and will continue to provide information during its performance of the RiskSmart process that is true, accurate and correct;
 - 2.1.2 has disclosed to the Logan City Council the locations of all the Accredited Consultant's premises;
 - 2.1.3 will immediately inform the Logan City Council in writing of any changes to the Accredited Consultant's employment by the Accredited Consultancy, and any other information provided or disclosed by the Accredited Consultant during the Accreditation Process;
 - 2.1.4 will keep itself informed of any changes made by the Logan City Council to the Guidelines for Accredited Consultant/Consultancy;
 - 2.1.5 will carry out RiskSmart Assessment Services safely, securely and in a professional manner;
 - 2.1.6 will carry out the RiskSmart Assessment Services in accordance with the standards specified by the Logan City Council from time to time including in the Guidelines for Accredited Consultant/Consultancy and as required by law; and

2.1.7 will comply with the lawful advice and directions of the Logan City Council made in connection with the RiskSmart Process.

- 2.2 Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Consultant any Intellectual Property Rights of the Logan City Council or any goodwill in the same.
- 2.3 The Accredited Consultant acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Consultant are limited to the type of use the Accredited Consultant/Consultancy is qualified and demonstrates competency in, as determined by the Logan City Council (eg. Industrial, Residential, Reconfiguring a Lot etc). The Accredited Consultant must not perform any RiskSmart Assessment Services that, in the opinion of Logan City Council, fall outside the limitations of the accreditation of the Accredited Consultant.
- 2.4 The Accredited Consultant acknowledges that any non-compliance with or breach by the Accredited Consultant of the Guidelines for the Accredited Consultant/Consultancy or the terms of this Deed in the conduct or operation of RiskSmart Services by the Accredited Consultant for or on behalf of Logan City Council will provide the Logan City Council with the option to elect to immediately cancel the accreditation of both the Accredited Consultant and the Accredited Consultancy.
- 2.5 The Accredited Consultant indemnifies the Logan City Council from and against any loss or damage suffered or incurred by the Logan City Council in connection with the Logan City Council relying upon any errors or omissions caused or contributed to by the Accredited Consultant (including but not limited to claims by third parties) in connection with the RiskSmart Assessment Services performed by the Accredited Consultant. This clause 2.5 survives termination or expiry of this Deed.
- 2.6 The Accredited Consultant must not provide or disclose any Confidential Information to any third party without the prior written consent of the Logan City Council. If the Accredited Consultant becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform the Logan City Council of the disclosure. These provisions shall not restrict the Accredited Consultant from:
 - a) Disclosing information to third parties (including its sub-consultants or sub-contractors) which is necessary for the performance of Services provided that any such disclosure is on terms which include a confidentiality clause identifiable to the Accredited Consultant's obligations under this Clause
 - b) Disclosing the information to its insurance broker legal representatives and financial or accounting advisors to the extent required for the day to day running of the Accredited Consultant's business or making or defending a claim either under an insurance policy or in court proceedings

This clause 2.6 survives termination or expiry of this Deed.

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- 2.7 The terms of the Guidelines for the Accredited Consultant/Consultancy form part of the terms of this Deed. In the event of inconsistency, the terms of this Deed shall prevail over the terms of the Guidelines for the Accredited Consultant/Consultancy to the extent of the inconsistency.

3. Logan City Council's obligations

- 3.1 Subject to the terms of this Deed, the Logan City Council shall:
- 3.1.1 carry out the RiskSmart Assessment Process with due care and skill; and
- 3.1.2 promptly after the execution of this Deed, add the name of the Accredited Consultant to the List of Accredited Consultants (for clarity, the name of the Accredited Consultant may be removed from that list in accordance with this Deed).
- 3.2 The Accredited Consultant acknowledges and agrees that:
- 3.2.1 it has not relied on any statement, representation, warranty, conduct or undertaking made or given by the Logan City Council or any person on its behalf; and
- 3.2.2 it has relied on its own skill and judgment in agreeing to enter into this Deed.
- 3.3 The Logan City Council is not liable to pay to the RiskSmart Consultant any fees, expenses or other costs in connection with the Accreditation Process, the RiskSmart Services or for any other work performed by the Accredited Consultant in connection with this Deed.

4. Suspension and or removal

- 4.1 The Accredited Consultant agrees that the Logan City Council may, by notice in writing to the Accredited Consultant and/or the Accredited Consultancy, suspend the right of the Accredited Consultant to perform the RiskSmart Assessment Services if, in the opinion of Logan City Council:
- 4.1.1 the Accredited Consultant fails to: (a) maintain the relevant level of professional body membership and professional indemnity insurance required by the Guidelines for Accredited Consultant/Consultancy; or (b) provide the Logan City Council with evidence (including certificates of currency and policy schedules) of that insurance within one business day of the Logan City Council requesting such evidence;
- 4.1.2 the Accredited Consultant has breached any of its obligations and/or warranties in clause 2;
- 4.1.3 the Logan City Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Consultant, or

- 4.1.4 the Accredited Consultant ceases to be employed or otherwise engaged by the Accredited Consultancy.

- 4.2 The Accredited Consultant must cease providing RiskSmart Assessment Services on and from the date of suspension and for the period of time specified in the notice given by the Logan City Council under clause 4.1 above, or if no date is specified in that notice, immediately upon receipt of that notice by the Accredited Consultant.

- 4.3 The Logan City Council may remove the name of the Accredited Consultant from the List of Accredited Consultants during the period of any suspension under this clause 4.

5. Expiry and Termination

- 5.1 This Deed commences on the date that it is signed by both parties and continues for a period of five years, unless terminated earlier (including but not limited to termination under clauses 5.2 and 5.3 below).
- 5.2 The Logan City Council may by notice in writing to the Accredited Consultant and/or the Accredited Consultancy, immediately terminate this Deed if:
- 5.2.1 the Logan City Council determines that it is not reasonable for the Accredited Consultant to remain accredited because of the nature or extent of conduct which led to the Logan City Council issuing a notice to the Accredited Consultant under clause 4.1 above;
- 5.2.2 the Accredited Consultant breaches any of the terms of this Deed, including any failure to comply with the Accredited Consultant's obligations or warranties in clause 2; or
- 5.2.3 the Accredited Consultant becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by the Logan City Council).
- 5.3 The Logan City Council may terminate this Deed for convenience (for any reason or for no reason) by giving no less than 60 days notice to the Accredited Consultant.
- 5.4 In exercising any of its rights under clause 5, the Logan City Council has no obligation to consider the impact of the termination on the Accredited Consultant and has no liability to the Accredited Consultant for any loss or damage suffered or incurred by the Accredited Consultant as a result of the termination.

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6. Effect of Suspension, Termination and Completion of Term

Immediately upon suspension or termination of this Deed under clauses 4 and/or 5 all rights granted by the Logan City Council to the Accredited Consultant end and:

- 6.1 the Accredited Consultant must immediately cease using the Logan City Council Accredited Consultant Graphic specified by Logan City Council (Trade Mark) and must (at the election of the Logan City Council) return or destroy any documentation, signage or other materials that feature the Trade Mark or any other Intellectual Property Rights of all licensed by the Logan City Council;
- 6.2 the Logan City Council shall remove the Accredited Consultant from the List of Accredited Consultants;
- 6.3 the Accredited Consultant must cease providing any RiskSmart Assessment Services;
- 6.4 the Accredited Consultant must cease to represent or refer to itself as an "Accredited Consultant" of the Logan City Council; and
- 6.5 the Accredited Consultant must immediately return any documents and confidential information of the Logan City Council and must provide written undertakings that it has done so, upon request by the Logan City Council. Nothing in this Deed prevents the Accredited Consultant from retaining one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Deed.

7. Waiver and Forbearance

The waiver or forbearance of the Logan City Council in the face of any breach of this Deed by the Accredited Consultant shall not be construed as a waiver or relinquishment of the Logan City Council's rights to future performance of such provision and the Accredited Consultant's obligations in respect of such future performance shall continue in full force and effect.

8. Limitation of Liability

Notwithstanding anything to the contrary in this Deed, the Logan City Council excludes all liability to the Accredited Consultant in connection with any loss or damage (including consequential loss, indirect loss, loss of profit, loss of revenue, loss of opportunity, loss of bargain and damage to reputation) suffered or incurred by the Accredited Consultant in connection with this Deed or any act or omission of the Logan City Council, including the negligence of the Logan City Council (but not including death or personal injury directly caused by the gross negligence of the Logan City Council).

9. Entire Agreement

These terms and conditions of this Deed contain the entire understanding between the parties and any variation of the provisions of this Deed shall have no effect unless in writing and signed by the parties.

10. Notices

Any notice to be served under this Deed shall be in writing and served upon the recipient at its address set out at page 1 of the Accreditation Application Form by hand, regular post or facsimile and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand and on completion of transmission if sent by facsimile.

11. Jurisdiction and Law

This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12. Consent and approval

If the Logan City Council has a right to approve, consent, decide, determine, form an opinion or make any other decision of any kind under this Deed, it may exercise that right at its absolute discretion and, in exercising the right, it may do so conditionally or unconditionally, is not obliged to give reasons or consult with the Accredited Consultant in exercising that right and has no obligation to exercise the right within any particular period of time or a within reasonable period of time.

13. Amendment

This Deed may only be varied or replaced by a document executed by the parties.

14. Contra proferentem

No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

15. Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

Page 5 of 5

Executed as a Deed

In witness hereof the parties hereto set their hands and seals the day and year first hereinbefore written.

Signed, sealed and delivered by

[Signature of Council representative],

[Name of Council representative (print)],

on behalf of Logan City Council with the intention of being immediately and unconditionally legally bound by this Deed in the presence of:

[Signature of Witness],

[Name of Witness (print)],

Date:

Signed, sealed and delivered by

[Signature of Accredited Consultant],

[Name of Accredited Consultant (print)],

In the presence of:

[Signature of Witness],

[Witness name (print)],

Date:

Council use only

DM#9444438

Date Received

Name of Receiving officer

Development Assessment Enquiry Counter

Phone: (07) 3412 5269

Email: darisksmart@logan.qld.gov.au

Address: Logan City Council
 PO Box 3226
 Logan City DC QLD 4114



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Logan Planning Scheme 2015

RiskSmart Planning Accreditation Kit Form A4 Accreditation Deed for Consultancy

Page 1 of 6

Made as a Deed

This deed is made the day of
20 ,

between:

Logan City Council
Administration Centre
150 Wembley Road, Logan Central
PO Box 3226, Logan City DC, Qld 4114
("Logan City Council")

and:

[insert Company Name],

[insert Company address],

Postcode

[insert ACN of accredited consultancy]

("Accredited Consultancy")

in relation to the accredited consultancy performing RiskSmart assessment services for Logan City Council.

Recitals

- The Accredited Consultancy has successfully completed the Accreditation Process and now wishes to provide RiskSmart Assessment Services to the Logan City Council, including admission to the List of Accredited Consultants.
- The Logan City Council requires the Accredited Consultancy to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- The process and services relevant to the RiskSmart Assessment Services are set out in the Guidelines for Accredited Consultant/ Consultancy.
- The Development Assessment Manager is authorised to sign this deed on behalf of Logan City Council.

Terms and conditions

1. Definitions and Interpretation

The following terms shall have the following meaning for the purpose of this Deed:

'Accredited Consultant' is the individual considered 'accredited' for the purposes of RiskSmart Assessment. The individual consultant must demonstrate the required level of expertise and experience to obtain accreditation.

'Accredited Consultancy' means the body corporate named in the Accreditation Application Form completed by the Accredited Consultant for the Accreditation Process.

'Accreditation Process' means the process and assessment procedures for becoming an Accredited Consultant, as specified by the Logan City Council and which has been completed by the Accredited Consultancy.

'Authorised User' has the meaning given to that term by the *Trade Marks Act 1995* (Cth)

'Confidential Information' means the confidential information of the Logan City Council and includes any documents or information provided by the Logan City Council: (a) that are marked as confidential; (b) that are provided by the Logan City Council under circumstances or communications that are confidential; or (c) which the Accredited Consultant ought to know are confidential but (in respect of any of the information in (a), (b) and (c) of this definition), does not include any information that is or becomes part of the public domain, other than as a result of a breach of an obligation of confidence or any information that is required to be disclosed by law.

'Deed' means this Accreditation Deed.

PLEASE NOTE: Logan City Council is collecting your business details for development application purposes only. Logan City Council will use this information to process the application of your proposed development and this information will only be accessed by employees of Logan City Council for Council related business activities only. Your information will not be given to any other person or agency unless you have given us permission or we are required by law.

Page 2 of 6

‘Guidelines for Accredited Consultant/Consultancy’ means the guidelines titled “Guidelines for Accredited Consultant/Consultancy” which are attached to this Deed, as amended by the Logan City Council from time to time.

‘Intellectual Property Rights’ means all intellectual and industrial property rights and interests in Australia and throughout the world, whether registered or unregistered and whether created before on or after the date of this Deed, including trademarks, designs, patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how, trade secrets and all other intellectual property rights.

‘List of Accredited Consultants’ means the list of accredited consultants and consultancies as from time to time may be published by the Logan City Council and in the manner of publication or disclosure determined by Logan City Council.

‘Operational Works’ has the same meaning as given to it under the *Planning Act 2016* (Qld).

‘RiskSmart Assessment Services’ means the Third Party Assessment Services, which the Logan City Council specifies from time to time including, but not limited to, the preparation of RiskSmart Accredited Consultant Development applications including but not limited to the following Stormwater Quality, Vegetation Management, Roadworks etc.

‘Term’ means the term of this Deed, as determined by clause 5.1.

2. Accredited Consultancy's obligations

2.1 The Accredited Consultancy hereby represents and warrants to the Logan City Council, and it is a condition of this Deed that the Accredited Consultancy:

- 2.1.1 provided information to the Logan City Council during the Accreditation Process that was true, accurate and correct and will continue to provide information during its performance of the RiskSmart Assessment Services that is true, accurate and correct;
- 2.1.2 has disclosed to the Logan City Council the locations of all the Accredited Consultancy's business premises;
- 2.1.3 will immediately inform the Logan City Council in writing of any changes to the Accredited Consultancy's business address(es); business, company or trading name(s) and any other information provided or disclosed by the Accredited Consultancy during the Accreditation Process;
- 2.1.4 will keep itself informed of any changes made by the Logan City Council to the Guidelines for Accredited Consultant/Consultancy;
- 2.1.5 will carry out the RiskSmart Assessment Services safely, securely and in a professional manner;

2.1.6 will carry out the RiskSmart Assessment Services in accordance with the standards specified by the Logan City Council from time to time including in the Guidelines for Accredited Consultant/Consultancy and as required by law; and

2.1.7 will comply with the lawful advice and directions of the Logan City Council made in connection with the RiskSmart Assessment Services.

2.2 Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Consultancy any Intellectual Property Rights of the Logan City Council or any goodwill in the same.

2.3 The Accredited Consultancy acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Consultancy are limited to the type of use the Accredited Consultancy is qualified and demonstrates competency in, as determined by the Logan City Council (eg. Industrial, Residential, Reconfiguring a Lot etc). The Accredited Consultancy must not perform any RiskSmart Assessment Services that, in the opinion of Logan City Council, fall outside the limitations of the accreditation of the Accredited Consultancy.

2.4 The Accredited Consultancy acknowledges that any non-compliance with or breach by the Accredited Consultancy of the Guidelines for the Accredited Consultant/Consultancy or the terms of this Deed in the conduct or operation of RiskSmart Assessment Services by the Accredited Consultancy for or on behalf of Logan City Council will provide the Logan City Council with the option to elect to immediately cancel the accreditation of both the Accredited Consultancy and any Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the RiskSmart Assessment Services.

2.5 Prior to performing any RiskSmart Assessment Services, the Accredited Consultancy must:

- 2.5.1 take out and maintain from a reputable insurance company, professional indemnity insurance that applies to the performance of RiskSmart Assessment Services by the Accredited Consultancy (whether performed by employees or contractors of the Accredited Consultancy) for an amount of cover of no less than \$1 million per claim; and
- 2.5.2 take out and maintain from a reputable insurance company, public liability insurance that applies to the performance of the RiskSmart Assessment Services by the Accredited Consultancy for an amount of cover no less than \$5 million per occurrence; and
- 2.5.3 provide the Logan City Council with a copy of the certificate of currency and policy schedule of each of the insurance policies referred to in clauses 2.5.1 and 2.5.2; and

Page 3 of 6

2.6 Without limiting the insurance obligations of the Accredited Consultancy under clause 4.1.1, the Accredited Consultancy must:

2.6.1 maintain the insurance policies referred to in clauses 2.5.1 and 2.5.2 during the Term and for a period of no less than seven years from the later to occur of:

2.6.1.1 the termination or expiry of this Deed; or

2.6.1.2 the Accredited Consultancy providing the Logan City Council with the final deliverable that the Accredited Consultancy is required by the Logan City Council to provide in connection with this Deed

2.6.2 upon request, provide the Logan City Council with up-to-date copies of the certificate of currency and policy schedule of the insurance policies referred to in clause 2.6.1.

Clause 2.6 survives termination or expiry of this Deed.

2.7 The Accredited Consultancy indemnifies the Logan City Council from and against any loss or damage suffered or incurred by the Logan City Council in connection with the Logan City Council relying upon any errors or omissions caused or contributed to by the Accredited Consultancy (including but not limited to claims by third parties) in connection with the RiskSmart Assessment Services performed by the Accredited Consultancy or by an Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the RiskSmart Assessment Services. This clause 2.7 survives termination or expiry of this Deed.

2.8 The Accredited Consultancy must not provide or disclose any Confidential Information to any third party without the prior written consent of the Logan City Council. If the Accredited Consultancy becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform the Logan City Council of the disclosure. These provisions shall not restrict the Accredited Consultancy from:

- a) Disclosing information to third parties (including its sub-consultants or sub-contractors) which is necessary for the performance of Services provided that any such disclosure is on terms which include a confidentiality clause identifiable to the Accredited Consultancy's obligations under this Clause
- b) Disclosing the information to its insurance broker legal representatives and financial or accounting advisors to the extent required for the day to day running of the Accredited Consultancy's business or making or defending a claim either under an insurance policy or in court proceedings

This clause 2.9 survives termination or expiry of this Deed.

2.9 The terms of the Guidelines for the Accredited Consultant/ Consultancy form part of the terms of this Deed. In the event of inconsistency, the terms of this Deed shall prevail over the terms of the Guidelines for the Accredited Consultant/Consultancy to the extent of the inconsistency.

3. Logan City Council's obligations

3.1 Subject to the terms of this Deed, the Logan City Council shall:

3.1.1 carry out the Accreditation Process with due care and skill;

3.1.2 promptly after the execution of this Deed, add the name of the Accredited Consultancy to the List of Accredited Consultants (for clarity, the name of the Accredited Consultancy may be removed from that list in accordance with this Deed);

3.1.3 during the Term, grant a limited, revocable, non-exclusive licence (without any right to sublicense) to the Accredited Consultancy to use the Logan City Council Accredited Consultant Graphic specified by the Logan City Council (Trade Mark) to perform the RiskSmart Assessment Services, provided that:

3.1.3.1 without limiting any other restrictions on use of the Trade Mark by the Accredited Consultancy under this Deed, the Accredited Consultancy must not exercise any rights that it may have as an Authorised User under section 26(1) of the Trade Marks Act 1995 (Cth) without the prior written consent of the Logan City Council; and

3.1.3.2 the Accredited Consultancy may only use the Trade Mark only in accordance with the directions given from time to time by the Logan City Council.

3.2 The Accredited Consultancy acknowledges and agrees that:

3.2.1 it has not relied on any statement, representation, warranty, conduct or undertaking made or given by the Logan City Council or any person on its behalf; and

3.2.2 it has relied on its own skill and judgment in agreeing to enter into this Deed.

3.3 The Logan City Council is not liable to pay to the Accredited Consultancy any fees, expenses or other costs in connection with the Accreditation Process, the RiskSmart Assessment Services or for any other work performed by the Accredited Consultancy in connection with this Deed.

Page 4 of 6

4. Suspension and or removal

- 4.1 The Accredited Consultancy agrees that the Logan City Council may, by notice in writing to the Accredited Consultancy, suspend the right of the Accredited Consultancy to perform RiskSmart Assessment Services if, in the opinion of Logan City Council:
- 4.1.1 the Accredited Consultancy fails to: (a) maintain the relevant level of professional body membership and professional indemnity insurance required by the Guidelines for Accredited Consultant/Consultancy or (b) provide the Logan City Council with evidence (including certificates of currency and policy schedules) of that insurance within one business day of the Logan City Council requesting such evidence;
- 4.1.2 the Accredited Consultancy's breaches of any of its obligations and/or warranties in clause 2; or
- 4.1.3 the Logan City Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Consultancy, its directors, employees, agents, contractors or any of its Senior Management.
- 4.2 The Accredited Consultancy must cease providing RiskSmart Assessment Services on and from the date of suspension and for the period of time specified in the notice given by the Logan City Council under clause 4.1 above, or if no date is specified in that notice, immediately upon receipt of that notice by the Accredited Consultancy.
- 4.3 The Logan City Council may remove the name of the Accredited Consultancy from the List of Accredited Consultants during the period of any suspension under this clause 4.

5. Expiry and Termination

- 5.1 This Deed commences on the date that it is signed by both parties and continues for a period of five years, unless terminated earlier (including but not limited to termination under clauses 5.2 and 5.3 below).
- 5.2 The Logan City Council, may by notice in writing to the Accredited Consultancy, immediately terminate this Deed if:
- 5.2.1 the Logan City Council determines that it is not reasonable for the Accredited Consultancy to remain a accredited because of the nature or extent of conduct which led to the Logan City Council issuing a notice to the Accredited Consultancy under clause 4.1 above;
- 5.2.2 the Accredited Consultancy breaches of the terms of this Deed, including any failure to comply with the Accredited Consultancy's obligations or warranties in clause 2; or

5.2.3 the Accredited Consultancy becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by the Logan City Council).

5.3 The Logan City Council may terminate this Deed for convenience (for any reason or for no reason) by giving no less than 60 days notice to the Accredited Consultancy.

5.4 In exercising any of its rights under clause 5, the Logan City Council has no obligation to consider the impact of the termination on the Accredited Consultancy and has no liability to the Accredited Consultancy for any loss or damage suffered or incurred by the Accredited Consultancy as a result of the termination.

6. Effect of Suspension, Termination and Completion of Term

Immediately upon suspension or termination of this Deed under clauses 4 and/or 5 all rights granted by the Logan City Council to the Accredited Consultancy end and:

- 6.1 the Accredited Consultancy must immediately cease using the Trade Mark and must (at the election of the Logan City Council) return or destroy any documentation, signage or other materials that feature the Trade Mark or any other Intellectual Property Rights at all licensed by the Logan City Council;
- 6.2 the Logan City Council shall remove the Accredited Consultancy from the List of Accredited Consultants;
- 6.3 the Accredited Consultancy must cease providing any RiskSmart Assessment Services;
- 6.4 the Accredited Consultancy must cease to represent or refer to itself as an "Accredited Consultancy" of the Logan City Council; and
- 6.5 the Accredited Consultancy must immediately return any documents and confidential information of the Logan City Council and must provide written undertakings that it has done so, upon request by the Logan City Council. Nothing in this Deed prevents the Accredited Consultant from retaining one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Deed.

7. Waiver and Forbearance

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Page 5 of 6**8. Limitation of Liability**

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Page 6 of 6**Executed as a Deed**

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Signed, sealed and delivered by

[Signature of Council representative],

[Name of Council representative (print)],

on behalf of Logan City Council with the intention of being immediately and unconditionally legally bound by this Deed in the presence of:

[Signature of Witness],

[Name of Witness (print)],

Date:

Signed, sealed and delivered by

[Company Name],

[ACN of accredited consultancy]

[Signature of Director of the accredited consultancy],

[Name of Director of the accredited consultancy (print)],

Date:

Council use only**DM#9444438**

Date Received

Name of Receiving officer

Development Assessment Enquiry Counter**Phone:** (07) 3412 5269**Email:** darisksmart@logan.qld.gov.au
Address: Logan City Council
 PO Box 3226
 Logan City DC QLD 4114