

LOGAN CITY COUNCIL DEVELOPMENT ASSESSMENT

ExpressSeal



PLAN SEALING

Logan Planning Scheme 2015 Accreditation Model and Application Kit

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1.0 Introduction

The Express Seal Plan Sealing Assessment Initiative (herein referred to as Express Seal) was developed to address a number of issues, both internally and externally, present in the assessment of Plan Sealing requests). These issues include:

- lengthy assessment timeframes for relatively simple requests;
- 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 request information quality; and
- inconsistent and unclear Council requirements for development industry.

Express Seal allows suitably qualified professionals to become accredited to prepare and endorse selected Plan Sealing requests. Express Seal assessment by professional individuals and organisations 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 adopted Council Policies; and
- Creation of a system wherein Council can reasonably rely on a suitably qualified individual’s request and undertake immediate assessment.

The aim of Express Seal is to increase accountability of accredited professionals. This allows Council to place trust and confidence in accredited professionals and adopted a risk tolerant approach to approving Plan Sealing requests, with the overall result being a significant decrease in the assessment timeframes.

2.0 Description of Accreditation

The accreditation process, coupled with the clear standards and criteria, seeks to implement a more efficient mechanism for approving Plan Sealing

requests.

The accreditation of professional individuals and organisations 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 an individual's professional qualifications. Its aim is to ensure the integrity of the process and qualify only individuals who, by reason of their expertise, experience, integrity and honesty can be relied upon to properly use the Express Seal process and to certify compliance with the relevant documentation, including all permits, associated reports and plans.

Applicants lodging in this way are agreeing to follow and abide by a procedure required 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 high-quality Plan Sealing requests, knowledge of the *Planning Act 2016* (PA), the *Planning Regulation 2017* (PR), the *Land Title Act 1994* (LTA) and the *Body Corporate and Community Management Act 1997* (BCCM) and familiarity with the Council's planning scheme and policies.

To undertake Express Seal, accreditation for the both the individual (Representative) and the organisation are required. It is critical that the individual has demonstrated the required level of expertise and experience. Where an Accredited Representative moves from one firm to another, the individual Representative is not required to reapply for accreditation provided they are moving from one accredited Organisation to another.

3.0 Accreditation Categories

There are two categories of accreditation for Express Seal. The Representative, on application, must request which category of accreditation they are seeking.

1. Minor Developments:

- Building Format Plans - Subdivision of Existing Buildings
- Building Format Plans - Subdivision of New Buildings
- Standard Format Plans - Realignment of Boundaries
- Standard Format Plans - up to 10 additional Lots.

2. Major Developments:

- Standard Format Plans - Associated with Large or Major Projects (as determined by Council).

4.0 The Accreditation Kit

The Accreditation Kit contains all the relevant material to assist **individuals** (Representative) and **organisations** in obtaining accreditation and outlines Council's expectations. Outlined below are the documents contained in the Accreditation Kit:

- Accreditation Application Form for Representative and Organisation;
- Guideline for an 'Accredited Representative/Organisation';
- Deed of Agreement for Accredited Representative;
- Deed of Agreement for Accredited Organisation

The Accreditation Kit adopted for the Express Seal process is at Appendix A..

Accreditation Application Form

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

1. *Demonstrated knowledge* by the Representative of the planning scheme and plan sealing processes, and provisions held therein as well as the PA, PR, LTA, BCCM and other legislation. This may be achieved through providing evidence of lodging a significant number of relevant requests to the Council, in a recent timeframe that demonstrates a detailed understanding of the relevant requirements and processes for plan sealing and bonding in Council. This includes, but is not limited to:

- Demonstrated ability to prepare Plan Sealing requests to Council standard;
- Demonstrated ability to prepare Compliance Reports to certify that development conditions have been complied with;
- Demonstrated knowledge of Council's Bonding Policy on uncompleted works;

- Demonstrated knowledge of preparation of legal documentation in relation to easements, transfer documents and covenants.

Guideline for an ‘Accredited Representative/ Organisation’

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 Representative/ Organisation’ and any other interested party. It is recognised that both parties (Council and the ‘Accredited Representative/Organisation’) must possess a detailed understanding of the process to guarantee its success.

The Guideline for an ‘Accredited Representative/ Organisation’ clearly outlines a step-by-step process which:

- Identifies the requirements for the lodgement of a request under Express Seal Assessment;
- Identifies the timeframe or indicative timeframe by which Council will issue an approval having relied on the accreditation;
- Identifies a probationary period where required;
- Identifies an auditing process

Deed of Agreement for Accredited Representative and Deed of Agreement for Accredited Organisation

The ‘Accredited Representative/Organisation’ must agree to the terms and conditions of the process before Council can reasonably rely on their expert advice for certification of Plan Sealing requests. This is achieved by documenting the roles and responsibilities of both the ‘Accredited Representative/Organisation’ and the Council, and requiring a signature of acceptance of these terms. The documents that formalise this arrangement for individuals and organisations are titled the Deed of Agreement for Accredited Representatives and Deed of Agreement for Accredited Organisation (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 to the Council may be grounds for removal of accreditation for both the individual (Representative) and the Organisation they represent. Council may also undertake actions or proceedings to have any errors by the Representative rectified.

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

4.0 QUALIFYING ACCREDITED REPRESENTATIVES AND ORGANISATIONS

Meeting the accepted criteria to qualify as an ‘Accredited Representative and Organisation’

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

This accreditation may only apply to the specific assessment of a document or work that the applicant is qualified in and does not allow the Representative to assess requests under Express Seal Assessment in which they have not demonstrated the necessary competence.

Council may outline responsibilities and impose conditions on the accreditation of a Representative and/ or Consultancy. If the ‘Accredited Representative or Organisation’ breaches the terms of the accreditation, Council may remove accreditation depending on the severity of the breach.

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

The 'Accredited Representative and Organisation' must sign the terms and conditions applied by the Council in the deeds.

Note that all disciplinary action(s) that are imposed on a particular Representative will also be imposed on the Organisation they represent. The expectation is that the participating Organisation develops their quality assurance process regarding Express Seal Assessment.

5.0 Monitoring the Process

Monitoring the activity of its 'Accredited Representative and Organisation'

In order to ensure that the 'Accredited Representative and Organisation' 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 Representatives 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 plan sealing requests lodged by the Representative and the Organisation and thus for their removal from the list of 'Accredited Representative and Organisations.' Council may however, at their discretion, consider issues such as the severity of the alleged breach, the responsiveness of the Representative to the breach and history of the Representative and the Organisation 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 minor discrepancy;
- Return to a probation period for a set number of requests and subject to an extended approval timeframe;
- Removing the ability to lodge under Express Seal Assessment for a set period of time (suspension);
- Cancellation of accreditation of the 'Accredited Representative'.

Glossary

ACCREDITED REPRESENTATIVE (INDIVIDUAL)

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

ACCREDITED ORGANISATION

An Organisation that has demonstrated sufficient competency to be considered 'accredited' for the purposes of this accreditation process, the accreditation is valid for an Organisation whilst an Accredited Representative is under their employment. In the event of the Representative ceasing employment with the accredited Organisation or the accredited Organisation's inability to demonstrate sufficient competency, the accreditation shall be suspended or removed until such time as an Accredited Representative is working for the Organisation.

COMPLIANCE REPORT

A compliance report is a detailed report submitted with a Express Seal Plan Sealing request which clearly details that the applicant of the subject development approval has complied with all conditions of the approval, and all conditions of any related approval, that are required to be completed prior to Council's endorsement of the plan of survey. Where the relevant conditions require works to be completed, the applicant may bond uncompleted works to allow earlier sealing of the plan of survey in accordance with Council's Bonding Policy.

The compliance report may be in the form of a table/and or written statements, and include all necessary evidence of compliance with the relevant conditions.

DA Rules

Development Assessment Rules; refer to Chapter 3, Part 4 of the *Planning Act 2016*

PA

Planning Act 2016

Relevant Legislation

Queensland

Planning Act 2016 (Qld) (PA)

Planning Regulation 2017 (Qld) (PR)

Sustainable Planning Act 2009 (Qld) (SPA)

Sustainable Planning Regulation 2009 (Qld) (SPR)

Integrated Planning Act 1997 (Qld) (IPA)

Land Title Act 1994 (Qld) (LTA)

Local Government Act 1993 (Qld) (LGA)

Body Corporate and Community Management Act 1997 (Qld) (BCCM)

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

Appendix A: Accreditation Kit

Note: an individual Representative applying for accreditation is required to complete and submit the following three (3) forms:

- A1 Accreditation Application Form
- A2 Deed of Agreement for Accreditation for Representative
- A4 Deed of Agreement for Accreditation for Organisation

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1 Organisation

Name of Organisation

Signature of Director:

Date:

2 Representative

Name of Representative

Signature of Representative:

Date:

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

- An individual applicant should submit a covering letter which, explicitly outlines the individual has the necessary experience/knowledge of the following:
 - Demonstrated ability to prepare Survey Plans to Council standard
 - Demonstrated ability to prepare Compliance Reports
 - Demonstrated knowledge of Council's Bonding Policy and bonding uncompleted works
 - Demonstrated knowledge of preparation of legal documentation in relation to easements, land transfers and covenants.
 - Applicable Council standards/policies
 - State Planning Regulatory Provisions
 - Single State Planning Policy
 - Applicable Australian Standards.

- Provide examples of three (3) plan sealing requests lodged and approved within the last 18 months of applying for accreditation, identifying the following:

- Details of the Compliance Report and the general completeness of the requests (e.g. sufficient details stating compliance with all conditions of approval);
- The resulting actions stemming from any Non-Compliance Notice

Process Following Accreditation

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

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

It is the responsibility of the Accredited Express Seal Representative, following assessment of an request, to submit the necessary information to Council to endorse the survey plan. Council will approve the survey plan within 48 hours of lodgement if all Council requirements are completed.

It is the responsibility of the Accredited Representative to ensure all conditions of development have been met and that the development does not have any outstanding issues, and all uncompleted works are bonded.

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

Telephone: (07) 3412 5155

Email: daplansealing@logan.qld.gov.au

Please continue to Page 2...

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The purpose of this practice guideline is to inform the Accredited Representative/Organisation of the operational nature of Express Seal assessment.

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 requests considered straightforward. It achieves this by effectively allowing a Council to rely upon information from an Accredited Representative/Organisation, whilst retaining the decision-making powers, thus avoiding any duplication of effort. In terms of benefits to industry, it is envisaged that the request assessment period will be significantly reduced, and the Accredited Representative/Organisation is more closely involved in the development process.

The Accredited Representative/Organisation is responsible for the following:

- Preparing, or arranging the preparation of, Survey Plans that addresses Council standards;
- Preparing 'Compliance Reports' to demonstrate compliance with relevant conditions of approval, and Council Policies, Council Local Laws, Codes and/or Australian Standards, as reasonably relevant to the plan sealing request;
- Accurately completing the Express Seal Check Sheet, Council's Plan Sealing Request Check Sheet and all other relevant documents to be attached with the plan sealing request;
- The early request for Council's legal service provider to prepare any documents required for transfer of land or easements over Council infrastructure. The use of Council's Standard Terms Documents for easements may also be used. These documents shall be executed by all parties prior to lodgement of the Plan Sealing request;
- Payment of all relevant fees and Infrastructure Charges; and
- Lodging a request with Council.

Before Council will seal a plan, the plan must comply with all conditions of a lot reconfiguration, operational works or material change of use approval, for example completion of any conditions requiring works.

Council will endeavour to make a decision on a Plan sealing request within 48 hours of lodgement.

Note: Express Seal Assessment transfers responsibility to the Accredited Representative/Organisation to ensure supporting reports and plans 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 Representative/Organisation to rectify the issue or matter.

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

The *Express Seal Assessment* process is outlined below:

Stage 1 – Accredited Representative and Organisation

- Representative and Organisation complete Accreditation Kit including Deeds of Agreement.
- Council provides written confirmation of the certification of the Accredited Representative.

Stage 2 – Prepare Documentation

- Accredited Representative prepares survey plans.
- Accredited Representative prepares any other relevant documentation such as easement and bonding documentation. (N.B. Council has Standard Terms documents that can be used by the applicant's solicitors for preparation of easement documents prior to lodging a plan sealing request. Alternatively, Council's solicitors can prepare the documentation as part of the Preliminary Plan Sealing request.)
- Accredited Representative prepares a comprehensive Compliance Report, including evidence that all relevant conditions of approval have been met. The Accredited Representatives are required and entrusted with the responsibility to ensure all conditions of development have been addressed and completed and that all other outstanding issues have been resolved, including bonding of uncompleted works.
- Accurately complete the Express Seal Check Sheet and provide all relevant documentation.

Stage 3 – Lodge Preliminary Request

- Accredited Representative lodges a Preliminary Plan Sealing request to initiate the calculation of Infrastructure Charges and the execution of transfer of land and easement documents (where necessary).
- Council issues a quotation for the current Infrastructure Charges to the Accredited Representative/Organisation within three (3) business Days. This quotation is current for a maximum period of 30 days.
- If necessary, Council will initiate preparation of the relevant documents for transfer of land, easements and covenants and return the executed documents to the Accredited Representative.
- All Titles Office forms (transfer of land, easements and covenants) are to be executed by both parties before lodgement of Express Seal Plan Sealing request.

Stage 4 – Lodge Request

- Accredited Representative lodges complete and assessed Express Seal request with Council.
- Council will endeavour to decide the request within 48 hours upon receiving an request that meets the following criteria:
 - The request is correctly lodged (request form, applicable fees and portable long service levy);

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- The Infrastructure Charges and all outstanding rates are paid on the day of lodgement in accordance with the quotation.
- All necessary documentation outlined in the Express Seal Check Sheet is included;
- Any other relevant material that has been used to determine the request is provided.

Note: Council will charge an administration fee as outlined in the fees and charges schedule.

Probation Program

Where a Representative/Organisation is unable to clearly demonstrate experience in lodging requests with Council, but has extensive experience in other councils, the Council may consider the implementation of a probationary period to allow for the Representative to demonstrate the required competence. The probationary period is generally for the first three (3) requests lodged for plan sealing as part of the Express Seal Assessment process. Under probation, Council will undertake an audit of the request prior to its approval. The probation program is to provide Council and the Representative with an understanding of the Express Seal Assessment process. The decision timeframes during the probationary period will be longer to allow for Council audits and review.

Auditing

Auditing will be performed by Council, at the Council's discretion, to assess the adequacy of the process and the performance of the Accredited Representatives.

Council may contact the Accredited Representative/Organisation during an audit process for information or assistance.

Miscellaneous

Any omissions, errors or misdirections will be discussed with the Representative and are grounds for removal from the Express Seal Assessment 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 Representative/Organisation 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#11134077**

Date Received

Name of Receiving officer

Development Assessment Enquiry Counter

Phone: (07) 3412 5269

Email: daplansealing@logan.qld.gov.au

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

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Logan Planning Scheme 2015

ExpressSeal Plan Sealing Accreditation Kit Form A2 Accreditation Deed for Representative

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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 organisation]

[insert ACN of accredited organisation]

("Accredited Representative")

in relation to the accredited representative performing Express Seal assessment services for Logan City Council.

Recitals

- A. The Accredited Representative as an employee or contractor of the Accredited Organisation wishes to provide Express Seal Assessment Services under the Express Seal Assessment Process to Logan City Council
- B. The Logan City Council requires the Accredited Representative to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- C. The process and services relevant to Express Seal Assessment are set out in the Guidelines for Accredited Representative/Organisation.
- D. 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 Representative' is the individual considered 'accredited' for the purposes of Express Seal Assessment. The individual Representative must demonstrate the required level of expertise and experience to obtain accreditation.

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

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

'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 Representative 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 Representative/Organisation’ means the guidelines titled “Guidelines for Accredited Representative/Organisation” 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 Representatives’ means the list of Accredited Representatives 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.

‘Plan Sealing’ has the same meaning as given to it under the Planning Act 2016 (Qld).

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

‘Express Seal Assessment’ means the Express Seal Accredited Representative Plan sealing Assessment services, which the Logan City Council specifies from time to time including, but not limited to, preparation of Express Seal Assessment compliant Plan sealing requests.

2. Accredited Representative’s obligations

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

- 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 Express Seal process that is true, accurate and correct;
- 2.1.2 has disclosed to the Logan City Council the locations of all the Accredited Representative’s premises;
- 2.1.3 will immediately inform the Logan City Council in writing of any changes to the Accredited Representative’s employment by the Accredited Organisation, and any other information provided or disclosed by the Accredited Representative 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 Representative/Organisation;
- 2.1.5 will carry out Express Seal Assessment Services safely, securely and in a professional manner;
- 2.1.6 will carry out the Express Seal Assessment Services in accordance with the standards specified by the Logan City Council from time to time including in the Guidelines for Accredited Representative/Organisation 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 Express Seal Assessment Process.

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

2.3 The Accredited Representative acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Representative are limited to the type of use the Accredited Representative/Organisation is qualified and demonstrates competency in, as determined by the Logan City Council. The Accredited Representative must not perform any Express Seal Assessment Services that, in the opinion of Logan City Council, fall outside the limitations of the accreditation of the Accredited Representative (i.e. an individual accredited for Plan Sealing Express Seal Assessment can not endorse or assess applications for Operational Works or any other type of work or development unless the appropriate accreditation is held by the individual).

2.4 The Accredited Representative acknowledges that any non-compliance with or serious breach by the Accredited Representative of the Guidelines for the Accredited Representative/Organisation or the terms of this Deed in the conduct or operation of Express Seal Assessment Services by the Accredited Representative 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 Representative and the Accredited Organisation.

2.5 The Accredited Representative must not provide or disclose any Confidential Information to any Express Seal without the prior written consent of the Logan City Council. If the Accredited Representative 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 Representative from.

- a) Disclosing information to third parties (including its sub-Representatives 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 Representative’s obligations under this Clause

This clause 2.5 survives termination or expiry of this Deed.

2.6 The terms of the Guidelines for the Accredited Representative/Organisation 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 Representative/Organisation to the extent of the inconsistency.

Page 3 of 5**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 Express Seal Assessment Process with due care and skill; and
- 3.1.2 promptly after the execution of this Deed, add the name of the Accredited Representative to the List of Accredited Representatives (for clarity, the name of the Accredited Representative may be removed from that list in accordance with this Deed).
- 3.2 The Accredited Representative 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 Representative any fees, expenses or other costs in connection with the Accreditation Process, the Express Seal Assessment Services or for any other work performed by the Accredited Representative in connection with this Deed.

4. Suspension and or removal

- 4.1 The Accredited Representative agrees that the Logan City Council may, by notice in writing to the Accredited Representative and/or the Accredited Organisation, suspend the right of the Accredited Representative to perform the Express Seal Assessment Services if, in the opinion of Logan City Council:
- 4.1.1 the Accredited Representative has breached any of its obligations and/or warranties in clause 2;
- 4.1.2 the Logan City Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Representative, or
- 4.1.3 the Accredited Representative ceases to be employed or otherwise engaged by the Accredited Organisation.
- 4.2 The Accredited Representative must cease providing Express Seal 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 Representative.
- 4.3 The Logan City Council may remove the name of the Accredited Representative from the List of Accredited Representatives 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 Representative and/or the Accredited Organisation, immediately terminate this Deed if:
- 5.2.1 the Logan City Council determines that it is not reasonable for the Accredited Representative to remain accredited because of the nature or extent of conduct which led to the Logan City Council issuing a notice to the Accredited Representative under clause 4.1 above;
- 5.2.2 the Accredited Representative breaches any of the terms of this Deed, including any failure to comply with the Accredited Representative's obligations or warranties in clause 2; or
- 5.2.3 the Accredited Representative becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by the Logan City Council).
- 5.3 Should Logan City Council choose to discontinue the Express Seal Plan Sealing Process, for any reason, the Accredited Representative will be notified in no less than 60 days.
- 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 Representative and has no liability to the Accredited Representative for any loss or damage suffered or incurred by the Accredited Representative 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 Representative end and:

- 6.1 the Accredited Representative must immediately cease using the Logan City Council Accredited Representative 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;

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- 6.2 the Logan City Council shall remove the Accredited Representative from the List of Accredited Representatives;
- 6.3 the Accredited Representative must cease providing any Express Seal Assessment Services;
- 6.4 the Accredited Representative must cease to represent or refer to itself as an “Accredited Representative” of the Logan City Council; and
- 6.5 the Accredited Representative 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 Representative 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 Representative 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 Representative’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 Representative 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 Representative 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 Representative 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 Representative Consultant],

[Full Name of Accredited Representative (print)],

In the presence of:

[Signature of Witness],

[Witness name (print)],

Date:

Council use only**DM#11134077**

Date Received

Name of Receiving officer

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

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Logan Planning Scheme 2015

ExpressSeal Plan Sealing Accreditation Kit Form A3 Accreditation Deed for Organisation

Page 1 of 5

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 organisation]

("Accredited Organisation")

in relation to the accredited organisation performing Express Seal assessment services for Logan City Council.

Recitals

- A. The Accredited Organisation has successfully completed the Accreditation Process and now wishes to provide Express Seal Assessment Services to the Logan City Council, including admission to the List of Accredited Representatives.
- B. The Logan City Council requires the Accredited Organisation to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- C. The process and services relevant to Express Seal Assessment Services are set out in the Guidelines for Accredited Representative/Organisation.
- D. 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 Representative' is the individual considered 'accredited' for the purposes of Express Seal Assessment. The individual Representative must demonstrate the required level of expertise and experience to obtain accreditation.

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

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

'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 Organisation ought to know is 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.

'Guidelines for Accredited Representative/Organisation' means the guidelines titled "Guidelines for Accredited Representative/Organisation" which are attached to this Deed, as amended by the Logan City Council from time to time.

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 5

'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 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 Representatives' means the list of accredited Representatives and organisations 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.

'Plan sealing' has the same meaning as given to it under the *Planning Act 2016* (Qld).

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

'Express Seal Assessment' means the Express Seal Accredited Representative Assessment services, which the Logan City Council specifies from time to time including, but not limited to, preparation of Express Seal Assessment compliant Plan sealing requests.

2. Accredited Organisation's obligations

- 2.1 The Accredited Organisation hereby represents and warrants to the Logan City Council, and it is a condition of this Deed that the Accredited Organisation:
 - 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 Express Seal Assessment Services that is true, accurate and correct;
 - 2.1.2 has disclosed to the Logan City Council the locations of all the Accredited Organisation's business premises;
 - 2.1.3 will immediately inform the Logan City Council in writing of any changes to the Accredited Organisation's business address(es); business, company or trading name(s) and any other information provided or disclosed by the Accredited Organisation 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 Representative/Organisation;
 - 2.1.5 will carry out the Express Seal Assessment Services safely, securely and in a professional manner;
 - 2.1.6 will carry out the Express Seal Assessment Services in accordance with the standards specified by the Logan City Council from time to time including in the Guidelines for Accredited Representative/Organisation 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 Express Seal Assessment Services.
- 2.2 Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Organisation any Intellectual Property Rights of the Logan City Council or any goodwill in the same.
- 2.3 The Accredited Organisation acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Organisation are limited to the type of use the Accredited Organisation is qualified and demonstrates competency in, as determined by the Logan City Council. The Accredited Organisation must not perform any Express Seal Assessment Services that, in the opinion of Logan City Council, fall outside the limitations of the accreditation of the Accredited Organisation.
- 2.4 The Accredited Organisation acknowledges that any non-compliance with or serious breach by the Accredited Organisation of the Guidelines for the Accredited Representative/Organisation or the terms of this Deed in the conduct or operation of Express Seal Assessment Services by the Accredited Organisation 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 Organisation and any Accredited Representative employed or contracted by the Accredited Organisation who undertook the Express Seal Assessment Services.
- 2.5 Prior to performing any Assessment Services, the Accredited Organisation must:
 - 2.5.1 take out and maintain from a reputable insurance company, professional indemnity insurance that applies to the performance of Express Seal Assessment Services by the Accredited Organisation (whether performed by employees or contractors of the Accredited Organisation) for an amount of cover of no less than \$5 million per claim; and
- 2.6 The Accredited Organisation 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 Organisation (including but not limited to claims by third parties) in connection with the Express Seal Assessment Services performed by the Accredited Organisation or by an Accredited Representative employed or contracted by the Accredited Organisation who undertook the Express Seal Assessment Services. This clause 2.6 survives termination or expiry of this Deed.
- 2.7 The Accredited Organisation must not provide or disclose any Confidential Information to any Express Seal without the prior written consent of the Logan City Council. If the Accredited Organisation becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform the Logan City Council of the

Page 3 of 5

disclosure. These provisions shall not restrict the Accredited Organisation from:

- a) Disclosing information to third parties (including its sub-Representatives 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 Organisation's obligations under this Clause

This clause 2.7 survives termination or expiry of this Deed.

- 2.8 The terms of the Guidelines for the Accredited Representative/Organisation 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 Representative/Organisation 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 Organisation to the List of Accredited Representatives (for clarity, the name of the Accredited Organisation 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 Organisation to use the Logan City Council Accredited Representative Graphic specified by the Logan City Council (Trade Mark) to perform the Express Seal Assessment Services, provided that:
 - 3.1.3.1 without limiting any other restrictions on use of the Trade Mark by the Accredited Organisation under this Deed, the Accredited Organisation 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 Organisation 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 Organisation 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 Organisation any fees, expenses or other costs in connection with the Accreditation Process, Express Seal Assessment Services or for any other work performed by the Accredited Organisation in connection with this Deed.

4. Suspension and or removal

- 4.1 The Accredited Organisation agrees that the Logan City Council may, by notice in writing to the Accredited Organisation, suspend the right of the Accredited Organisation to perform Express Seal Assessment Services if, in the opinion of Logan City Council:
 - 4.1.1 the Accredited Organisation's breaches of any of its obligations and/or warranties in clause 2; or
 - 4.1.2 the Logan City Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Organisation, its directors, employees, agents, contractors or any of its Senior Management.
- 4.2 The Accredited Organisation must cease providing Express Seal 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 Organisation.
- 4.3 The Logan City Council may remove the name of the Accredited Organisation from the List of Accredited Representatives 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 Organisation, immediately terminate this Deed if:
 - 5.2.1 the Logan City Council determines that it is not reasonable for the Accredited Organisation 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 Organisation under clause 4.1 above;
 - 5.2.2 the Accredited Organisation breaches the terms of this Deed, including any failure to comply with the Accredited Organisation's obligations or warranties in clause 2; or

Page 4 of 5

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

5.3 Should Logan City Council choose to discontinue the Express Seal Plan Sealing Process, for any reason, the Accredited Representative will be notified in no less than 60 days.

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 Organisation and has no liability to the Accredited Organisation for any loss or damage suffered or incurred by the Accredited Organisation 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 Organisation end and:

6.1 the Accredited Organisation 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 Organisation from the List of Accredited Representatives;

6.3 the Accredited Organisation must cease providing any Express Seal Assessment Services;

6.4 the Accredited Organisation must cease to represent or refer to itself as an "Accredited Organisation" of the Logan City Council; and

6.5 the Accredited Organisation 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 Representative 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 Consultancy 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 Consultancy'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 Organisation in connection with any loss or damage (including consequential loss and indirect loss, loss of profits, loss of revenue, loss of opportunity, loss of bargain and damage to reputation) suffered or incurred by the Accredited Organisation in connection with this Deed but not to the extent that such loss or damage has resulted from the negligent actions or omissions 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.

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12. Consent and approval

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

Page 5 of 5**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.

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

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

[Company Name],

[ACN of accredited organisation]

[Signature of Director of the accredited organisation],

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

Date:

Council use only**DM#11134077**

Date Received

Name of Receiving officer

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

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