

BUILT ENVIRONMENT PROFESSIONS GROUPING

BEP Policy 2014

Comment by the Built Environment Professions Grouping

Proposed/ draft Built Environment Professions (BEP) Policy
(Notice 370 of 2014: 23 May 2014)
Department of Public Works

For Attention

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EXECUTIVE SUMMARY

This document comprises the comment of the Built Environment Professions Grouping (BEPG) regarding the gazetted “Draft Built Environment Professions (BEP) Policy (Notice 370 of 2014: 23 May 2014)”, as proposed by the Department of Public Works, and issued for public comment.

The BEP Grouping is a consensus body bound by a Memorandum of Understanding, which comprises seven voluntary associations (VAs) in the professions listed on page 71 of the abovementioned Gazette, but excluding the Property Valuers profession and including the profession of Construction Health & Safety Managers.

The VAs comprising the BEPG are:

- (1) Association of Construction Health & Safety Management (ACHASM),
- (2) Association of Construction Project Managers (ACPM),
- (3) Association of South African Quantity Surveyors (ASAQS),
- (4) Consulting Engineers South Africa (CESA),
- (5) Institute for Landscape Architecture in South Africa (ILASA),
- (6) South African Black Technical & Allied Careers Organisation (multi-disciplinary) (SABTACO),
- (7) South African Institute of Architects (SAIA).

The Grouping is business focussed and represents the interests of professional practices and firms as opposed to other VAs that represent the interests of professionally registered individuals. It is a multi-disciplined professional organisation that liaises primarily with public sector clients like DPW to improve service delivery of infrastructure and allied systems in the Built Environment.

After studying the DPW proposal, the BEPG advocates the adoption of Option 2, which supports the retention of the current situation where the Minister continues to regulate the CBE and the BEPCs through the current organisational structure (DPW – CBE – BEPCs), and contemplates legislative amendments to clearly define the roles and responsibilities of the CBE and the BEPCs.

In addition to the above the BEPG recommends the following legislative amendments:

- 1 Clearly establish the CBE as the representative body for the BEP Councils (BEPCs)
- 2 The DPW to liaise solely with the CBE as the representative body of the BEPCs
- 3 The DPW to have oversight of the CBE and act as its link with Government.
- 4 Make professional registration compulsory in the Built Environment
- 5 Enforce Identification of Work for each Profession.
- 6 Create a Government-funded Ombudsman for the BEPCs (similar to the Public Protector)

It further recommends that Government recognises/agrees the following principles:

- 1 That DPW has neither the capacity nor the objectivity to assume the CBE role
- 2 That BEPCs are technical professional bodies that maintain quality & safety standards
- 3 That BEPCs are not intended to redress social inequalities or implement government policies.
- 4 That the BEPCs are independent of Government
- 5 That the CBE requires permanent technical and support staff to effectively fulfil its purpose
- 6 That some BEPCs & the CBE require Government funding without affecting their independence

The BEPG is grateful for the opportunity to comment on the Draft BEP Policy

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1 BACKGROUND

1.1 Draft Built Environment Professions (BEP) Policy

The Department of Public Works has issued the abovementioned draft policy as contained in Government Gazette No 37653 of 23 May 2014, for public comment.

The BEP Grouping (BEPG) has resolved to formally submit its comment on the proposed policy as contained in this document.

1.2 BEP Grouping

The BEP Grouping is a consensus body bound by a Memorandum of Understanding, which comprises seven voluntary associations (VAs) in the professions listed on page 71 of the abovementioned Gazette, but excluding the Property Valuers profession and including the profession of Construction Health & Safety Managers.

The Grouping is generally business focussed and essentially represents the interests of professional practices and consulting firms as opposed to other VAs that represent the interests of professionally registered individuals. It is a multi-disciplined professional organisation that liaises primarily with public sector clients such as DPW to improve service delivery of infrastructure and allied systems in the Built Environment.

The VAs comprising the BEP Grouping are:

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2 RECOMMENDATION

2.1 Introduction

The BEP Grouping unanimously and firmly advocates the following route for the restructuring of BEP Policy with respect to the governance & organisation arrangement of BEP Councils, particularly the role of the CBE, as contained in the DPW proposal published in Government Gazette dated 14 April 2014.

2.2 Recommendation in chief

The BEP Grouping supports Option 2 in that it supports the retention of the current situation where the Minister continues to regulate the CBE and the BEPCs through the current organisational structure (DPW – CBE – BEPCs), and introducing legislative amendments that are required to clearly define the roles and responsibilities of the CBE and the BEPCs.

2.3 Associated recommendations

The BEP Grouping further makes the following additional recommendations:

2.3.1 Legislation

It is recommended that Government implement legislative measures to:

- 1 Establish a clear policy and mandate for the CBE as the representative body for the BEP Councils (BEPCs) addressing issues such as governance, integration between BEPCs, liaison with Government, conflict resolution etc.
- 2 Establish a BEP liaison structure where DPW liaises solely with the CBE as the representative body of the BEPCs, whereafter the CBE will further communicate/ discuss with its constituent BEPCs.
- 3 Limit the role of DPW to that of oversight of the CBE and linking it with the Government of the day.
- 4 Make professional registration compulsory in the Built Environment as it is in the medical profession.
- 5 Effectively enforce Identification of Work for each Profession.
- 6 Create an Ombudsperson/body funded by Government, possibly within the CBE, for the BEPCs (similar to the Public Protector), tasked with overseeing its own investigations and mandated to raise matters within the ambit of our judicial system. Consideration be given to combining this function with the CBE role.

2.3.2 Recognition of principles

It is recommended that Government recognises/agrees:

- 1 That DPW has neither the capacity nor the objectivity to assume the CBE role
- 2 That the BEP Councils (BEPCs) are essentially and effectively technical professional bodies charged with maintaining standards and protecting the public from malpractices and dangerous practices.
- 3 That the BEPCs are not intended to redress social inequalities/ historic imbalances or implement government priorities and policies.
- 4 That the BEPCs are independent of Government
- 5 That the CBE requires permanent technical (BEP knowledge) and support staff to effectively fulfil its purpose
- 6 That resource poor BEPCs & the CBE may require Government funding without affecting their professional independence

3 JUSTIFICATION

3.1 Introduction

For convenience and ease of reference the format for detailed comment on the draft policy will be as follows:

REFERENCE: Specific paragraph in DPW draft BEP policy

COMMENTS:

- **DPW** - draft policy paragraph to be commented on
- **BEPG** - comment from the BEP Grouping (BEPG)

3.2 Detailed comment

3.2.1 Government national priorities

REFERENCE: Page 75 Second last paragraph

COMMENTS:

- **DPW** - Government's national policy priorities are linked directly to its objectives of poverty eradication, job creation, and reduced inequality. A central theme embedded in the achievement of national priorities is that of transforming society by redressing historically skewed ownership, employment, skills, and other patterns. The BEPs have a central role to play in redressing the afore-mentioned.
- **BEPG** – It is not the central role of BEPs to redress inequality, rather it is the role of Government and civil society. BEP Councils are essentially and effectively technical bodies charged with maintaining standards and protecting the public from malpractices and dangerous practices.

The role of BEPCs in South Africa cannot be different to the role of BEPCs in the rest of the world simply because South Africa's history or society is different. There are different avenues that Government should be actively using in pursuing and achieving these goals and it should not be through BEPCs. Unfortunately the low levels of Maths & Science prevailing at our schools has bedevilled attempts to swell the ranks of the professions and achieve transformation. However this failure should not be ascribed to the BEPCs. It is up to Government to formulate and implement policies based on pragmatic solutions that redress historical disadvantage.

3.2.2 Poor cooperation linked to legislative inadequacies

REFERENCE: Page 76 paragraph a)

COMMENTS:

- **DPW** - It is anticipated that the CBE would co-ordinate and facilitate the implementation of policy within the BE. However, like the CBE, each BEPC has its own independent Council accountable to the Minister of Public Works. Further, no mechanisms exist that oblige the BEPCs to act in synchrony on any matter. Thus, on

matters that BEPCs do not consider important or where they disagree with the CBE, the BEPCs reinforce their independence from the CBE, thus inhibiting the CBE from effectively discharging its mandate. The prevailing legislative environment does not ensure synergy and uniformity in the implementation of policy amongst the BEPCs.

- **BEPG** - There is no clear policy from Government nor a clear mandate as to what the CBE is to achieve. The existence of clear policy and mandate would have prevented much of the arguing and differences between the professions. The confusion permits the proposed inclusion of goals that do not belong in the area of the BEPCs giving the CBE a political focus instead of its intended technical/ professional focus.

3.2.3 Accountability

REFERENCE: Page 76 paragraph b)

COMMENTS:

- **DPW** - The BEPCs are established through legislation and in terms of the PFMA are defined as public entities established to maintain professional competence, protect the public, register professionals, and encourage growth of the profession. The BEPCs, although appointed by the Minister of Public Works to perform a regulatory role, perceive themselves as completely independent of the State, representing the professionals. Instead of seeking a mandate from the Minister of Public Works, the BEPCs seek their mandate from the professionals.
- **BEPG** – It is considered that the BEPCs, which regulate individual professionals must be independent of Government. The BEPCs are not political instruments and must be accountable to their members primarily. Any attempts by the state to control professional bodies which ought to be independent and remain independent must be resisted at all costs. BEPCs must remain autonomous bodies that look after the interests of the professions they represent.
However it is acknowledged that the BEPs (Built Environment Professionals) do require an independent Body, such as the CBE, to perform the regulatory role. The statement in the policy that such Councils should seek a mandate from the Minister of Public Works instead of seeking a mandate from the professionals, negates the reason for the existence of such Councils. If one considers the matters for which “In the main the BEPCs will be responsible for” (pages 80 and 81 of the Gazette), there would be no problem if the BEPC’s are left to fulfil these functions without interference. It is therefore difficult to understand what would change if the CBE were to be taken over by the DPW, unless it is their intention to force changes to the norms and standards that the BEPC’s currently use in carrying out their responsibilities. Presumably they could do that anyway through amendments to the various Acts governing the various Professions.

3.2.4 Governance

REFERENCE: Page 76 paragraph c)

COMMENTS:

- **DPW** – (1) Professional Councils raise fees through applications, registrations and services offered by the Professional Councils. They are empowered by legislation to raise such fees and thus such fees are public funds. Therefore, the BEPCs ought to comply with the Public Finance Management Act of 1999. Currently they do not and to a large extent there is resistance to do so.
(2) Further, the majority of the Council members on the CBE are nominated from the BEPCs. Once appointed as members to the CBE, these members are required to act in the best interest of CBE and perform their fiduciary duties accordingly. To the contrary, it is found that members nominated by the BEPCs tend to conduct themselves as representatives of the BEPCs, each with their competing interests, leading to the paralysis of CBE.
- **BEPCG** – (1) It is well-known that funding required to operate the BEPCs is not raised from the public but derived from professional fees paid by the professionals registered with those BEPCs. Consequently, the BEPCs are not financed from public funds and are not subject to the Public Finance Management Act (PFMA). It is understood that National Treasury concurs with this view. With respect it is considered that little thought has been invested into this proposal or its consequences. There appears to be no consideration given to the fact that much of the work done by BEPCs is carried out by volunteers in the professions who sacrifice their personal time without remuneration.
(2) Clearly the BEPCs need an integrating/governance forum such as the CBE where they can meet and constructively debate and resolve professional issues. Differing views and counterproposals and the like are part of the healthy democratic process. It is obvious that a BEPC representative appointed to the CBE will not view favourably attempts to supplant the specific BEPC's role or responsibilities. The DPW has to look no further than Parliament where MPs with clear mandates refuse to ratify legislation with which they do not agree. The idea that DPW can has the capacity and objectivity to play the role of the integrating/ governance forum is rejected.

3.2.5 Alignment to Government policy planning

REFERENCE: Page 77 paragraph d)

COMMENT:

- **DPW** - Currently there is poor alignment in policy planning and implementation between the DPW, the CBE and the BEPCs. The BEPCs, unlike the CBE, are at arm's

length from the DPW and therefore are not privy to the debates and decisions taken by the DPW, thus hindering the implementation of the DPW's policy decisions by Professional Councils. This leads to the disjuncture in the business plans of Professional Councils and that of the DPW. The former have not embedded in their business plans their contributions to Government's national priorities

- **BEPG** - It is considered that if the CBE is properly constituted and legislated the DPW could discuss professional issues with the CBE, which as the BEPC integrating/ governance forum, would then further communicate/ discuss with the BEPCs. However DPW should not labour under the misapprehension that the BEPCs/ CBE are its 'policy and implementation' vehicles rather that it has an oversight role and is the BEP link with the Government of the day.

3.2.6 Oversight

REFERENCE: Page 77 paragraph e)

COMMENTS:

- **DPW** - The BEPCs are not monitored on a regular basis to ensure the extent to which they are implementing their respective legislative mandates. They do not participate in the quarterly meetings between the Minister and the DPW's other Public Entities. The CBE, as the "overarching council", represents the BEPCs at the meetings. Thus, through practice and design, there has been prolonged deficient oversight of the BEPCs in the implementation of policies and their legislative mandates by the Executive Authority.
- **BEPG** – The policy oscillates between recommending that the “Minister of Public Works will directly regulate the Built Environment Professions and entrench the DPW’s shareholder role” and “the professions must regulate themselves””. The role of the DPW should be that of oversight only (not regulation) while the CBE should play the role of the BEPCs integrating/ governance representative forum/body, ensuring that the BEPCs regulate themselves.

3.2.7 Transformation

REFERENCE: Page 77 paragraph f)

COMMENTS:

- **DPW** - After 19 years of democracy, the number of previously disadvantaged individuals registered as professionals across the BEPs is dismally low - averaging under 25%. While this is a product of many factors, which Government is addressing, it is also the outcome of scarcity of innovation by respective BEPCs to address the impediments encountered by previously disadvantaged individuals to register as professionals. For example, there are limited opportunities for graduates to get practical training, resulting in a lapse in time before the graduates enter the labour market. Hence, historic inequalities at educational institutions and socio-economic disparities ought to be challenges the BEPCs address, in partnership with all relevant stakeholders.
- **BEPG** – Although the BEPs are acutely aware of the need to redress historic imbalances/inequities, the BEPCs are primarily mandated to ensure quality & safety

standards within the BEPs. The redress of the imbalances in the BEP arena has been mainly catered for by the introduction of legislation, such as the PPPFA & the BBBEE Act, and at ministerial level by the Ministers of Basic and Higher Education. It is considered that it will be difficult to achieve any meaningful degree of lasting transformation whilst the national standards of maths and science education are unacceptably low.

3.2.8 Funding of mandates

REFERENCE: Page 78 paragraph g)

COMMENTS:

- **DPW** - The BEPCs, particularly those with low levels of registration experience great challenges to implement their legislative mandate as they do not generate sufficient revenue from registration fees to sustain themselves. The costing of mandates is essential to provide insight into shortfalls and the remedial measures to be implemented.
- **BEPG** – It is considered that the funding of resource poor professional councils will remain an issue to be addressed irrespective of the institutional arrangement.

3.2.9 Non-compulsory registration

REFERENCE: Page 78 paragraph h)

COMMENTS:

- **DPW** - The current legislative framework requires a person to register with the respective BEPCs in order to practice in the profession. However it is observed that graduates with BE qualifications, whether registered as candidates or not, when employed and working under a registered professional, with the latter signing off the final output, lack the urgency to pursue professional registration. This practice avoids the legislative requirements of registration and deprives the BEPCs of registration fees.
- **BEPG** – It is considered that non-compulsory registration has been a shortcoming in the regulation of professionals since the introduction of the concept of professional registration. The problems associated with the low level of registration and by implication the poor collection of registration fees has been the inadequate or complete lack of any meaningful enforcement of Identification of Work for the Professions.

3.2.10 Investigation of complaints

REFERENCE: Page 78 paragraph i)

COMMENTS:

- **DPW** - The BEPCs are required to investigate complaints relating to professional misconduct as submitted by the public. The investigations must be comprehensive and conducted in a transparent manner to maintain public confidence that BEPCs are effective and competent in protection of the public. However, the costs of investigating

complaints against professional have hindered BEPCs from effectively discharging this legislative mandate.

- **BEPG** - The increasing need for an Ombudsman is clear, this individual would be tasked with overseeing his/her own investigations and with the proper mandate will be able to bring matters within the ambit of the judicial system or to levy fines. The financial sector and many other sectors are provided with Ombudsmen; it is not clear why this is not feasible for the BEPs. The term czar is used in other legislations and RSA would do well to follow suit in nominating/appointing one for the BEPs. The distinct advantages of a czar/ombudsperson are the substantially reduced costs and time of actions against guilty members (which at present have to be brought via either a Magistrate or a Superior Court).

3.2.11 Option 1 – A single CBE Board with six Professional Boards (super CBE Council)

REFERENCE: Page 78 Option Analysis – Option 1

COMMENTS:

- **DPW** - This option provides for the establishment of a super council that replaces the CBE. The six Professional Council Acts be repealed and BEPCs converted to Professional Boards that report to the Council. It restructures the current system to provide for standardised regulation of the Built Environment. The option was not supported by the BEPCs, National Treasury and the Department of Science and Technology.
- **BEPG** - Option 1 does not appear to be acceptable to any of the Parties and the BEP Grouping concurs with this view

3.2.12 Option 2 – The CBE and six Professional Councils (amending legislation)

REFERENCE: Page 79 Option Analysis – Option 2

COMMENTS:

- **DPW** – This option reflects the current situation. It proposes that the Minister would continue to regulate the CBE and the BEPCs - maintaining the current flat structure remains. This option provides for the BEPCs to report through the CBE, but they cannot be accountable to the CBE as the BEPCs remain regulatory instruments of the Minister of Public Works. Given that the relationship between the CBE and the Professional Councils is perceived as unclear, legislative amendments are required to clearly define the roles and responsibilities of the CBE and the BEPCs. This is a tedious exercise. However, as this option largely maintains the status quo, many of the current challenges, particularly with regard to accountability and aligned processes, may still be experienced. This option may not be ideal for the above-mentioned reasons.
- **BEPG** - This is the BEPG preferred option where the situation will remain as is with the Built Environment Profession Councils (BEPC) reporting to the Council for Built Environment (CBE). The Minister of Public Works will continue to regulate the CBE and BEPC's. The statement that this option is unworkable because of the history of the CBE indicates a lack of understanding of the reasons and causes of the current impasses (which have

largely been resolved). What is needed to make the current situation efficiently workable are clear and unambiguous legislation and mandates to define the roles and responsibilities of the CBE and BEPC's.

This includes the appointment of permanent technical staff who understand and are familiar with the BEPs and the BEPCs as well as staff necessary to support the running of the CBE operation (office manager, bookkeeper, committee clerks etc). Besides efficiently running the organisation the establishment of permanent staff will ensure continuity of processes, projects and corporate memory.

In this scenario the BEPs will remain independent and have a regulatory body that is specific to their Professions. The rules, responsibilities and relationship with the CBE will also be clear. Self-regulation by the BEPC's and acting as representatives of professionals are fundamentally rooted in the commercial sustainability of the BEP industry. While statutory regulation is undoubtedly required, the placement thereof directly in the DPW will constrain the growth potential of this vital industry.

3.2.13 Option 3 – Relocate the function of the CBE to the DPW

REFERENCE: Page 79 Option Analysis – Option 3

COMMENTS:

- **DPW** - The Minister of Public Works will directly regulate the Built Environment Professions and entrench the DPW's shareholder role. The CBE's promotional, facilitation and coordination role over BEPCs will be relocated within the DPW, leading to improved synergy between the DPW and the Professional Councils. The operationalization and institutionalization of the DPW's oversight across the BEPCs will be determined through a comprehensive business case, post the approval of this policy. This is the (DPW) preferred option.
- **BEPCG** - The third option, which is favoured by DPW but however not considered viable by the BEPG, is that the Minister of Public Works directly regulates the BEPs and in all regards assumes the role of the CBE. As stated above the question of the independence of and the regulations that may be imposed on the BE Professions are just some of the serious issues that should be considered in this option.

A fundamental issue is that BEP's do not only serve the public sector. Why then should a government department take over the CBE? The Department of Health does not run the HPC, neither the Department of Justice the Law Societies or Bar Councils.

In addition, the portion of Built Environment that the DPW is directly involved in is only a small part of the BEP activities, even in the public sector alone. It is respectfully considered that the DPW has neither the experience, nor the ability to be able to constructively regulate the BEPC's.

3.2.14 Policy recommendations

REFERENCE: Page 79 et seq.

COMMENTS:

- **DPW** - To arrest the above challenges and drive Government's national priorities, it is recommended that the Council for the Built Environment Act, 2000 (Act No 43 of 2000) be repealed. The CBE's function be transferred to the DPW.
- **BEPG** – It is respectfully pointed out that a Department experiencing severe challenges especially with respect to the recruitment of professional staff and which has been in this predicament for a number of years, cannot at this stage contemplate successfully assuming the role of the CBE and regulating the BEPCs. The BEP provide services to both Private and Public sectors and are active across many varying industries. As such, its regulation has far wider implications than what the DPW's mandate would allow it to effectively have control over.

3.3 Table of detailed recommendations (interim step in compiling final recommendations)

Ref	Subject	Recommendation
2.3.1	Government national priorities	That it be recognised that: <ol style="list-style-type: none"> 1 It is not the central role of BEPs to redress inequality, rather it is the role of Government and civil society. 2 BEP Councils are essentially and effectively technical bodies charged with maintaining standards and protecting the public from malpractices and dangerous practices.
2.3.2	Poor cooperation linked to legislative inadequacies	That Government take steps to: <ol style="list-style-type: none"> 1 Legislate a clear policy and mandate for the CBE 2 Allow the CBE to focus on the governance of the technical/professional aspects of the BEPCs
2.3.3	Accountability	That Government recognises that: <ol style="list-style-type: none"> 1 BEPCs are independent of Government as they regulate the individual professionals as is the CBE in relation to the BEPCs 2 The appropriate mandate for professional councils is from the professions as the councils enforce professionalism on individuals 3 The BEPCs require legislation merely to regulate registered professionals as well as to prevent unregistered persons from harming the public.
2.3.4	Governance	That Government: <ol style="list-style-type: none"> 1 Immediately dismisses any assertion regarding the imposition of the PFMA on the BEPCs or the CBE. 2 Recognises the CBE as the integrating/ governance forum for the BEPCs 3 Recognises that DPW can has neither the capacity nor the objectivity to become the integrating/ governance forum
2.3.5	Alignment to government policy planning	That steps be taken by Government to: <ol style="list-style-type: none"> 1 Properly legislate and constitute the CBE as the BEPC integrating/ governance representative forum 2 Establish the principle that DPW liaises with the CBE as the representative body of the BEPCs and that the CBE then further communicates/ discusses with its constituent BEPCs.

		3 Limit DPW role to that of oversight and as the BEP link with the Government of the day.
2.3.6	Oversight	That it be recognised that: 1 The role of the DPW should be that of oversight only (not regulation) 2 The role of the CBE is that of the BEPCs integrating/ governance representative forum/ body, 3 The BEPCs should regulate themselves.
2.3.7	Transformation	That it be recognised that: 1 The redress of historic imbalances is not in a BEPC mandate, but falls to the education system, business, industry and the VAs. 2 The members of the BEPG are actively addressing transformation by meeting and exceeding the requirements of the PPPFA
2.3.8	Funding of mandates	That: 1 Consideration be given to the funding by Government of resource poor BEPCs without restricting their professional independence, 2 It be recognised that this will remain an issue to be addressed irrespective of the institutional arrangement
2.3.9	Non – compulsory registration	That steps be taken to 1 Make professional registration compulsory in the Built Environment as it is in the medical profession. 2 Work reservation or Identification of Work be meaningfully enforced
2.3.10	Investigations of complaints	That steps be taken by Government to: 1 Create an Ombudsperson/body for the BEPCs (similar to the Public Protector), tasked with overseeing its own investigations and with the proper mandate capable of bringing matters within the ambit of our judicial system or of applying fines. 2 Consideration be given to combining this role with the CBE role. 3 This role should be funded by Government