1 March 2019

DPTI Planning Reform Engagement Team
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RE: RESPONSE TO DRAFT REGULATIONS AND PRACTICE DIRECTIONS SUBMISSION BY BUNNINGS GROUP LIMITED

We write in response to the request for feedback on the draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 (the draft Regulations) and four draft practice directions currently on public consultation until Friday, 1 March 2019.

In particular, we wish to comment on our perceived implications for Bunnings Group Limited ("Bunnings") should the above documents be adopted in their current form.

For context, Bunnings employs over 44,000 team members and operates 370 warehouses, stores and trade centres across Australia and New Zealand. In South Australia, Bunnings operates through 20 sites across the State and currently employs over 2,170 team members. Bunnings is a major owner and developer of property in South Australia.

The construction and operation of our stores generates significant investment and ongoing employment in the State. Over the last 12 years, Bunnings have invested more than $360m in property development and are currently rolling out a program of three new stores across the State, with a construction value of around $120m and that will generate 500 construction jobs and 480 jobs when operational. Bunnings are keen invest more.

In growing our store network, we have invested significant time and resources seeking to identify suitable sites and to submit development applications under the current planning system. Much of the frustration which we have experienced over several years has in our opinion been a consequence of:

- A lack of suitable sites appropriately zoned for purpose;
- Significant delay to initiate and undertake rezoning of land;
- Resistance to rezone land;
- Influence of third party representations on the Council Assessment Panel process.

In this context, Bunnings is supportive of the motivation and intent of the draft Regulations and Practice Directions, which forms an integral part of the overall planning reform process.
As always, issues may emerge as the options are distilled and final detail of the integrated reform package unfolds, noting the interrelated levers at the strategic, policy and development system levels.

On this basis, it would be appreciated if the Planning Commission continues to consult with Bunnings through this review process. Our interest will particularly be in respect to Phase Two and Three of the Planning and Design Code, which will influence the assessment pathway future Bunnings store proposals are likely to experience and the criteria that they will be required to meet.

In terms of specific comments, these are discussed in relation to each document below.

**Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019**

The draft Regulations offer several positive outcomes for development assessment, particularly in relation to the ‘deemed to satisfy’ process and increased opportunities for ‘call-in’ powers under Section 94 of the Planning, Development and Infrastructure Act 2016 (the Act).

However, some of the processes in the draft Regulations will potentially negatively impact the overall assessment timeframes for the delivery of future Bunning stores. These are generally in relation to the sections of the regulations relating to public consultation.

**Relevant Authorities**

In delivering its various projects throughout South Australia, Bunnings have had varying experiences in procuring development approvals/processing development applications, either via Council staff, Council Assessment Panel or the State Commission Assessment Panel (SCAP).

Overwhelmingly, the least time consuming and most efficient process have been in the circumstances where the SCAP was the relevant planning authority. SCAP was the relevant authority in the relevant circumstance due to the ‘call-in’ powers exercised by the State Coordinator-General.

In the light of this, we are supportive of the changes relating to relevant authorities and particularly, that the Commission is the relevant authority for restricted development and the increased opportunities for developments to be ‘called-in’ for the assessment of the Commission. We recommend that these ‘call-in’ criteria remain unconstrained (i.e. no development cost or limited to one category of development) to ensure that development of significance to the State can be assessed by the Commission.

**Public Consultation**

The new system provides increased opportunities for the public to access plans online and to be notified of a development (i.e. via a notice on the land and online). Such is considered to improve
the efficiency of the public consultation process for interested persons wishing to comment on a proposed development.

In addition, the introduction of the Community Engagement Charter should enable the public to have increased participation in the development of the Planning and Design Code and influence policy that future development will be assessed against.

Notwithstanding these benefits, proposed regulation 53 will enable interested persons 15 business days to comment on a proposed ‘performance assessed’ development and 20 business days to comment on a ‘restricted’ development, which is greater than the 10 business days currently allowed for.

Due to the increased involvement of interested parties at the policy formulation stage, in our opinion, 10 business days continues to be an appropriate length of time for an interested person to submit a representation. Accordingly, we request that this timeframe be reduced from the 15 and 20 business days proposed.

In addition to the above, we recommend that the regulations include exceptions to notifications, rather than limit these exceptions to only being detailed within the Planning and Design Code. This may include bulky goods outlets and advertisements being exempt from notification within an Industry, Urban Employment or Commercial Zone. This would provide more certainty for the processing of future development applications.

Further clarity on the nature of an ‘element’ should also be provided within the Regulations to enable certainty about which ‘elements’ of a development may be deemed to have planning consent and which ‘elements’ will be subject to public consultation.

State Planning Commission Practice Direction (Restricted and Impact Assessed Development) 2019

As mentioned earlier, there is a lack of suitable sites appropriately Zoned for Bunnings facilities, resulting in many identified opportunities/applications to date being ‘non-complying’ forms of development. It is anticipated that a similar issue may occur unless there are policy changes implemented through the Planning and Design Code. As a result, the State Planning Commission Practice Direction (Restricted and Impact Assessed Development) 2019 is likely to be relevant to the future development of Bunnings facilities.

The State Planning Commission Practice Direction (Restricted and Impact Assessed Development) 2019 has positive outcomes for the development industry including the Commission being the relevant authority and the opportunity to have a decision not to proceed to assess reviewed.

Notwithstanding this, it also presents implications in terms of the process of ‘proceeding to assessment’ and appeal rights, each discussed below.

Rights of Appeal
The opportunity to appeal a refusal against a ‘restricted’ development has been established by the Act. However, the proposed Practice Direction proposes to remove this right (Part 2(6)(7)). Given this is clearly at odds with the spirit and intent of the Act, we request that Part 2(6)(7) be removed or amended to reinforce the appeal rights established under the Act.

Process for Proceeding to Assess

The Practice Direction outlines the criteria that a development must satisfy in order to proceed to an assessment (Part 2(5)(2)). The proposed criteria which the SCAP are required to assess before an application even proceeds to an assessment are considered to place onerous upfront application and resourcing requirements on an applicant, such as demonstrating that there is a need for the development and that potential impacts are mitigated.

In our opinion, these matters should form part of the assessment of the application and as such, we recommend that these criteria be reduced in scope. We recommend removing criteria ‘b’, ‘c’ and ‘d’ and include these in the required information for the later planning report (within Part 2(6)(1)).

State Planning Commission Practice Direction (Conditions) 2019

Part 2(5)(4)(a) of the State Planning Commission Practice Direction (Conditions) states:

‘A condition requiring the relevant authority or some other person or body to be satisfied on a particular matter would essentially mean no decision had yet been made on the application. Where sufficient information is not available on a proposal, Section 39(2) of the Act provides that further information can be sought, and a final decision made with complete details of the proposal.’

Currently, an applicant and relevant authority can agree to attach conditions to a consent which require additional information to be provided. Examples include a landscaping plan or a stormwater management plan.

The wording of the above suggests that a relevant authority cannot condition that additional information be provided to the satisfaction of that authority. This is considered to impact the overall assessment timeframes with an applicant requiring additional time to provide this information upfront.

On the contrary, the State Planning Commission Practice Direction (Deemed Planning Consent – Standard Conditions) 2019 does allow for additional information to be provided after consent, such as the conditions relating to landscaping and stormwater management.

Therefore, we request that the State Planning Commission Practice Direction (Conditions) is revised to enable a relevant authority to condition that additional information be required where appropriate.

Conclusion
In summary, we recommend that the following changes be made to the draft Regulations and the State Planning Commission Practice Direction (Conditions) and (Restricted and Impact Assessed Development) to provide certainty for the future development of Bunnings facilities:

- Amend regulation 53(1)(a)(i) and (ii) to require representations to be submitted within 10 business days;
- Include exceptions to public notification within the regulations, rather than limit these exceptions to only being detailed within the Planning and Design Code;
- Provide clarity on the nature of an 'element' within the Regulations;
- Remove or amend Part 2(6)(7) of the State Planning Commission Practice Direction (Restricted and Impact Assessed Development) to reinforce the appeal rights established under the Act;
- Reduce the scope of the criteria required to be addressed in order to proceed to assess listed in Part 2(5)(2) of the State Planning Commission Practice Direction (Restricted and Impact Assessed Development) and enable this to form part of the planning assessment (specifically, remove criteria ‘b’, ‘c’ and ‘d’ and include them in Part 2(6)(1) instead); and
- Revise part 2(5)(4)(a) of the State Planning Commission Practice Direction (Conditions) to enable conditions to request information where appropriate.

Given the reform process is being implemented incrementally, it is challenging to understand the full implications of a particular procedural/policy change, without the benefit of reviewing the new consolidated system.

Accordingly, we recommend that the State Planning Commission plan to undertake a review of the integrated system within 6 months of the introduction of the Planning and Design Code, as we anticipate that there may be unforeseen implications arising, with a need to promptly resolve any such issues.

Please do not hesitate to contact me on [redacted] should you wish to discuss.

Yours faithfully,

Andrew Marks
Director - Property
Bunnings Group Limited