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DPTI

# **Accredited Professionals – Draft Regulations**

## **Assessment Pathways –Technical Discussion Paper**

## **Performance Indicators -Discussion Paper**

**Submission**

**October 2018**

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## 1. Introduction

The Local Government Association of South Australia (LGA) welcomes the opportunity to provide a response on the following three documents:

- Accredited Professionals – Draft Regulations
- Assessment Pathways – Discussion Paper
- Performance Indicators Discussion Paper

The LGA has consulted with local government and held a briefing session with local government planning representatives to assist in the development of the submission.

The LGA appreciates the opportunity to provide comment on these important documents which will have a significant bearing on South Australia's new planning system.

## 2. Consultation Process

The LGA wishes to express disappointment with the consultation process that has been undertaken relating to these significant aspects of our new planning system.

Councils have specifically expressed concern that the consultation period has occurred during the local government election caretaker period. While the LGA recognises that these are not statutory documents requiring formal consultation under the Community Engagement Charter, the local government sector is disappointed that the State government has sought input from councils during a time where elected member participation in decision making is constrained.

Further, the decision to consult on three key documents at the same time within a limited and inflexible timeframe is counter to our understanding of good engagement practice seeking considered and meaningful stakeholder input.

The manner in which key documents have been released, with different but interlinked components of the system being dealt with separately, makes their content highly theoretical and accordingly difficult to respond to in a meaningful way. For example, critical analysis of the Assessment Pathways Technical Paper is inhibited by uncertainty around the content of the Planning and Design Code (the Code), and the significant volume of information still to be determined by regulations and practice directions.

There is also concern about the potential for over use of practice directions in the early stages of implementing the *Planning, Infrastructures and Development Act 2016* (The PDI Act). The LGA understands that the purpose of a practice direction is to specify a procedural requirement or outline steps in matters arising with the Act. The LGA is concerned that practice directions may be used as 'de facto' regulations, which are able to be adopted without consultation.

A preferable approach would be for regulations under the PDI Act to be provided for consultation as a total package, which includes explanatory information, rather than the current segmented approach that results in key components presented in isolation and without other key information being available.

It is the LGA's view that providing the regulations as a total package with explanatory information would:

- Allow integrated consideration of the suite of planning reforms, enabling local government and other stakeholders to work through examples and case studies to develop meaningful and constructive feedback;
- Assist to provide clarity and reduce contradictions both within the regulations and with the PDI Act itself;
- Identify gaps and deficiencies with the regulations, prior to gazettal, which would negate the need for multiple practice directions;
- Identify any issues with the provisions in the PDI Act, which could be addressed prior to the July 2020 implementation date; and
- Address the current confusion amongst councils relating to the interpretation of the draft regulations

Current consultation with councils has highlighted both confusion and concern with elements outlined in the Assessment Pathways which would be appropriate to defer until resolved. There is a concern that the substantial number of changes to the planning system and limited timeframes for their simultaneous implementation risks less than ideal outcomes, as no time has been allowed for pilot testing and real-world application.

While we acknowledge that the Department for Planning, Transport and Infrastructure (DPTI) has responded to many of the questions raised in relation to the Accredited Professionals draft regulations and the Assessment Pathways Technical Paper, the LGA is of the view that further consultation and engagement is required with the local government sector.

### ***Recommendation***

Given the importance of this legislation for the future planning of South Australia, consideration should be given to reviewing the current resources being provided to DPTI and the State Planning Commission and being made available to local government to enable the proper consultation and engagement on the key components of the legislation and the effective transition to the new PDI Act.

## 3. Accredited Professionals Scheme – Draft Regulations

The LGA supports an accreditation scheme for planners and building surveyors to ensure that the development decisions affecting communities are made by professionals with the appropriate knowledge and experience, who are accountable to a clear and transparent standard of practice.

However, the LGA would like further information about why that key considerations for such a scheme provided in previous consultations by DPTI have not been translated into the current draft Regulations.

In the absence of the detail of the Planning, Development and Infrastructure (General) Regulations, consideration of the Accredited Professional Scheme is limited by the currently theoretical nature of the types of development each class of planning professional may be responsible for, and accordingly how significant the Scheme's impact will be.

### Assessment Manager terminology

The use of the term "Assessment Manager" has created significant confusion in the local government sector through its use as a defined relevant authority under section 87 of the PDI Act, and as a class of accreditation under the Accredited Professionals Scheme. While a person appointed as an Assessment Manager under section 87 should be accredited to Level 1 under the Scheme, a person accredited at Level 1 under the Scheme should not have the status of an Assessment Manager appointed under section 87.

It is also suggested that the regulations be amended to confine Level 1 accreditation to persons delegated by a council or Joint Planning Board

### Recommendations

That the regulations be amended to confine Level 1 accreditation to persons delegated by a council or Joint Planning Board

### Role of private planning professionals

The lack of clarity in the draft Regulations around the scope of private planning professionals to assess performance assessed development is of particular concern. The LGA's position is that in all but the most clearly defined of instances (i.e. carefully articulated deemed to satisfy policies), development assessment must be a responsibility of Council Assessment Panels (CAPs), Assessment Managers appointed by the Chief Executive of a council under section 87 of the PDI Act, and accredited professionals who are council employees. Similarly, public notification should remain a responsibility of councils.

Councils have a statutory responsibility to the public and their employees to act in the public interest. These responsibilities underpin councils' approach to development assessment decisions and the necessary balanced consideration of impacts and issues in the application of policy.

The range of expertise relevant to development control (e.g. traffic, waste, infrastructure) as well as local knowledge within individual councils contributes to holistic, integrated development assessment, and ultimately to better development outcomes.

The regulations provided for consultation leave open the possibility of private professionals being responsible for assessment of performance assessed applications with no public notification. In the absence of guidance on notification triggers, there is no reason to assume such applications would necessarily be straightforward or low impact, and councils must retain control of development decisions with potential to impact upon their landscapes and communities. The removal of third party appeal rights further exacerbates this concern.

### ***Recommendations***

That the Regulations clearly limit the assessment powers of private planning professionals to 'deemed to satisfy' applications.

## **Competency requirements**

Regulation 5 provides the Chief Executive (presumed to be of DPTI) with wide discretion to determine the qualifications, experience and technical skills required to be accredited at each level (the Competency Requirements), and to vary the Competency Requirements from time to time. While the Competency Requirements have been included in the Discussion Paper, it appears that they do not form part of the regulations, suggesting that they are able to be varied by the Chief Executive at any time.

The list of Competency Requirements should be included as part of the regulations (i.e. as a Schedule to the regulations), enabling the Competency Requirements to be approved by the Government and for the Parliament to have oversight.

In addition, the regulations do not prescribe that the Chief Executive must consult with affected individuals or bodies such as the LGA before making or varying the Competency Requirements. The input of affected bodies will be critical to ensuring the Competency Requirements are as effective as they can be, particularly given their centrality to the scheme of accredited professionals.

### ***Recommendations***

That the regulations be amended to include the list of Competency Requirements (i.e. as a Schedule to the Regulations).

That the regulations be amended to include a consultation requirement in relation to both the making and varying of the Competency Requirements.

## **Classes of Accreditation - Planning**

The LGA has a number of fundamental concerns with the classes of accreditation – planning, as set out in the draft regulations.

Role/responsibility descriptions should be completely removed from the titles of classes of accreditation. The descriptions are unnecessary and potentially confusing (see discussion of Assessment Manager terminology above). Accredited Planning Professional Levels 1 or 2 etc. is sufficient.

It is understood that the Scheme will not apply to policy planners. The exclusion of these professionals from a transparent quality assurance process is counter to the emphasis the new planning system gives to the need for high quality, consultative policy development at the “front end” of the process to enable efficiency and less conflict “downstream”. The Scheme should be broadened to incorporate policy planners and recognise the appropriate competencies, skills and experience necessary to undertake these important planning functions.

## **Planning level 1 – Assessment Manager**

The confusion around Assessment Manager terminology is noted in a previous section of this submission.

The concept of Peer Reviewed Compliance is new and the practicalities of how it will operate (for example, who can act as a peer reviewer; whether that person must themselves be an Assessment Manager; how many people will be required to support an application, etc.) have not been explained. The scheme also provides significant discretion for the Chief Executive of DPTI.

The rationale for Peer Reviewed Compliance in addition to demonstrating appropriate qualifications and experience is presently unclear and would appear unnecessary. The information sought in the peer review process would ordinarily be obtained and evaluated by the council or body when assessing the candidate for employment.

In the case of Assessment Managers who intend to work as self-employed consultants, the additional scrutiny of Peer Reviewed Compliance has merit and is supported to ensure that, in particular, performance assessed applications which involve the exercise of discretion and judgement, are only being determined by the best qualified individuals in the profession.

## **Planning level 2 – Assessment Panel Member**

It is unclear from the drafting of the Competency Requirements as to whether an applicant in an allied field may be eligible to be accredited at level 2 through having membership of a recognised equivalent scheme. This requires clarification to enable council assessment panels to have the range of skills necessary.

The PDI Act and Regulations have introduced a Code of Conduct and each council has its own Operating Procedures. The selection of CAP members by a council is a rigorous recruitment process, their term is limited and there are provisions for them to be removed if they are not fulfilling their duties appropriately which, arguably, would include a situation where they are not acting competently due to lack of knowledge or experience.

For an accreditation scheme to meet its goals it must be relevant, practical, efficient, cost effective and equitable. Most importantly, it must be directed to its core role in the exercise of the duties of CAPs. It must not be burdensome or costly for both its administrators and for those being accredited. It should also recognise prior learning and experience particularly when, as is the case in several CAPs, there are members who are, and remain, at the peak of their profession.

Further, it is unreasonable to require accreditation on an annual basis. Requiring highly skilled professionals to ‘prove’ every year that they are still qualified for a role is unnecessary and will impose considerable costs, both in time and money, to people who attend panel meetings on a fortnightly or monthly basis. The LGA is also of the opinion that the fees that are likely to be



involved to attain accreditation will ultimately be borne by a council, further increasing the cost burden of the new system on councils.

The draft Regulations impose an accreditation renewal regime that is likely to be inconsistent with the term of appointment of a CAP and, moreover, they do not provide transitional provisions for accreditation of existing CAPs at the time the Regulations come into force. It is the LGA's view that should accreditation of CAP members be introduced, it should be introduced for a period of five years not least to ensure that it covers the tenure of a CAP.

The acquisition of CPD points will involve a considerable amount of a CAP member's time and will no doubt impose considerable costs that will be additional to the costs of seeking accreditation. If there are barriers to CAP members accessing relevant CPD courses, this would affect their ongoing accreditation and put the exercise of councils' responsibilities at serious risk. The regulations need to provide more confidence that the means by which CPD points can be earned will at all times be able to meet the intent and scope of the CPD requirements.

As identified in the LGA's previous submission the LGA, we continue to be concerned about the inequity between the system being developed for CAPs compared with the State Commission Assessment Panel. Council Assessment Panels require independent and accredited panel members which based on the draft provisions will be required to participate in an expensive annual re-accreditation process, while members of the State Commission Assessment Panel (SCAP) are not required to meet these onerous provisions.

### **Planning level 3 – performance assessed development**

The purpose of this level of accreditation is unclear, as the only difference between levels 1 and 3 is the required experience. This must be clarified, particularly in relation to the need to separate the level 1 accreditation category from the Assessment Manager role under the section 87 of the PDI Act (refer discussion above – Assessment Manager terminology).

### **Planning level 4 – deemed to satisfy development**

The LGA is not supportive of accrediting planning professionals with only one year of experience. While deemed to satisfy development will not involve planning judgment in the sense of assessing a proposed development against the relevant provisions of the Code, many deemed to satisfy applications will involve technical assessments, and some will also involve matters of discretionary judgment, such as determining whether an element of an application is a minor variation from a deemed to satisfy requirement.

It may be that a separate level of accreditation for deemed to satisfy development is not necessary, and that it is more appropriate that the qualifications and experience for assessing deemed to satisfy development should be those required to be accredited at level 3. This is particularly so give that council planning staff (other than Assessment Managers) will not require an accreditation to assess such applications if they are acting pursuant to delegated authority.

### **Multiple classes of accreditation**

It is unclear in the draft Regulations whether a planning professional who wishes to be a member of an Assessment Panel and to undertake development assessment would be required to hold accreditations at more than one level, or whether a higher accreditation level will override the need for separate accreditation at lower levels.

It is the LGA's view that multiple accreditations should not be required, and that the regulations be clarified to provide that only one accreditation (the highest sought by the applicant) would be required, such that all individuals holding level 1 accreditation as Assessment Managers will also be eligible for appointment to Assessment Panels without also having to obtain a level 2 accreditation.

### **Recommendations**

1. That classes of accreditation be renamed as Accredited Professional Level 1, 2, 3 and 4
2. That the Scheme provide for appropriate accreditation of policy planners
3. That the requirement for peer reviewed compliance for Assessment Managers employed by councils be removed
4. That the requirement for accreditation of CAP members be removed, or the provisions be amended to require re-accreditation every 5 years and CPD requirements reconsidered, and the clarification of whether membership of an equivalent scheme (e.g. Australian Institute of Architects) can be recognized
5. That the purpose of planning level 3 accreditation be clarified
6. That the minimum level of experience required to be accredited at planning level 4 be increased

## **Classes of Accreditation - Building**

We note that because councils remain a relevant authority for the purposes of Building Rules assessment, there is no strict requirement for building staff to be accredited as a building certifier under the PDI Act to assess development in respect of the Building Rules. In relation to other functions to be carried out by council building staff under the PDI Act, including issuing emergency orders and fire safety notices under Sections 155 and 157 and undertaking building and swimming pool inspections under Sections 144 and 156, it is unclear whether council staff will be required to hold an accreditation under the PDI Act.

The purpose of the introduction of Level 4: Accredited Professional (Building Inspector) is unclear, and the lack of qualification required for accreditation is of concern. Further explanation of this level is required to enable meaningful comment or support.

### **Recommendation**

1. That the requirement for council staff carrying out statutory functions other than development assessment to be accredited building professionals be clarified through the regulations.
2. Clarify the intent of the introduction of Level 4: Accredited Professional (Building Inspector), and reasons for not requiring tertiary qualification of any kind.

## **Accreditation Process**

The LGA supports the concept of a register of all accredited professionals being maintained by the accreditation authority (Regulation 23) and accessible via the SA planning portal.

Clause 2(1)(c) of Schedule 2 of the Regulations relating to transition for existing private certifiers contains an error. In line 2, the reference to Section 93A should be Regulation 93A.

## Variation, cancellation or suspension of accreditation

The draft Regulations do not require the variation, cancellation, suspension or surrender (or proposed cancellation or suspension) of accreditation to be notified to a person or body with whom the accredited professional is employed (e.g. a council).

This means that unless the action taken by the accreditation authority is brought to a council's attention by the accredited professional themselves, the employer may remain unaware of the action that has been taken by the accreditation authority, which may have had the effect that the individual is no longer authorised to perform certain functions.

This could have serious consequences for a council, as it may affect the validity of decisions made in relation to development applications (even if the staff member, rather than the council is the "relevant authority" who has made the decision), and may also have significant implications for councils' insurance arrangements.

## Identity cards

Draft Regulation 33 provides that the accreditation authority "may" issue identity cards to accredited professionals with photographic identification and a list of the accredited professional's powers. The use of the word "may" in this context implies a level of discretion on the part of the accreditation authority to issue such cards, including a discretion to issue cards to some classes of accredited professionals and not others.

If this is not the intention, and it is intended that all accredited professionals be issued with identity cards the use of the word "may" be replaced with "should" or "must".

## Recommendations

1. That the Regulations be amended to include a requirement that if the accreditation authority proposes to, or does, vary a condition of an accreditation, cancel or suspend an accreditation, or if an accredited professional voluntarily surrenders their accreditation (i.e. in any circumstance in which the accreditation authority would be required to update the register of accredited professionals), that the person or body with whom the accredited professional is employed be appropriately notified by the Chief Executive of DPTI.
2. The use of the word "may" in Regulation 33 be replaced with "should" or "must".

## Audits

Under the draft Regulations the development assessment activities of all accredited professionals except planning level 2 Assessment Panel members must be audited every 5 years by an auditor will be chosen by the accreditation authority.

Every 5 years may too onerous and it is suggested that the regulations be amended to require that a qualified auditor may audit an accredited professional at any time, but not more than once within a five-year period, unless there are a specific circumstances that warrant an additional audit during the 5-year period.

Responsibility for arranging a periodic audit falls to the accredited professional. Failure to do so will amount to a ground for cancellation of accreditation. It is more appropriate for the auditor to be responsible for arranging audits, and the responsibility of accredited professionals limited to a

requirement that they make themselves available to the auditor and cooperate fully with the auditor.

In not listing specific matters to be addressed in the audit, the Regulations are investing the accreditation authority with a wide discretion to set the parameters of the audit. This allows for flexibility, but does not provide any certainty to accredited professionals. A list of matters which may be examined in an audit should be included as a schedule in the Regulations.

The draft Regulations require an auditor to report any significant contravention or failure to comply with the Act, Regulations or code of conduct to the DPTI Chief Executive, with a draft copy of the report to be provided to the accredited professional for comment. There is no requirement in the Regulations that any such report also be provided to the accredited professional's employer. Therefore, unless the accredited professional voluntarily self-reports the outcome of an audit, a council could be unaware of its occurrence and outcomes.

Further, the accreditation authority may take action in relation to an accredited professional including giving directions to rectify a matter, imposing conditions on an accreditation, lowering the level of an accreditation or cancelling or suspending an accreditation (with a right of review to South Australian Civil and Administrative Tribunal). Again, there is no requirement in the Regulations that any action taken under be reported to an accredited professional's employer.

### **Recommendations**

1. Amend the Regulations so that a qualified auditor may audit an accredited professional at any time, but generally not more than once within a five-year period.
2. That the Regulations be amended to make the auditor responsible for arranging audits, rather than the accredited professional.
3. Include a list of matters which may be examined in an audit as a schedule in the Regulations.
4. That the Regulations be amended to include a requirement that any report prepared by the auditor regarding a person who is an employee be provided to that person's employer as well as the DPTI Chief Executive.
5. That the Regulations be amended to include a requirement that any action taken by the accreditation authority be reported to an accredited professional's employer.

### **Code of conduct**

Given that some accredited professionals will also be council employees, the Code of Conduct should not be inconsistent with the current requirement in Section 92 of the *Development Act 1993* that a person must not act as a private certifier in certain situations is proposed to be carried over as Regulation 29. This requires an accredited professional to not act in relation to a development if he or she:

- has been involved in any aspect of the planning or design of the development;
- has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development; or
- is employed by any person or body associated with any aspect of the development.

The LGA is supportive of this requirement being carried over to the scheme of accredited professionals.

It would be beneficial for a definition to be included as to who will be deemed to be “*associated with*” an accredited professional. This could be done in a manner similar to the definition “closely associated” in the *Local Government Act 1999* which lists the circumstances where one person will be taken to be closely associated with another. Alternatively, the concept and definition of an “associate” used in Section 3(7) of the PDI Act could be adopted.

Once again, the Regulations do not require the investigator or the accreditation authority to advise an accredited professional’s employer that an investigation of a breach of the Code of Conduct is being undertaken, of the outcome of an investigation, or of any action taken by the accreditation authority following the receipt of a report. This must be rectified in the Regulations.

### **Recommendations**

1. Reference to “*any body associated with*” the private certifier in Section 92(1)(b) of the Development Act has been transcribed as “*anybody associated with*” the accredited professional in Regulation 29(1)(b), which should be corrected in the Regulations.
2. Include a definition as to who will be deemed to be “*associated with*” an accredited professional. Alternatively, the concept and definition of an “associate” used in Section 3(7) of the PDI Act could be adopted.
3. That the Regulations be amended to include a requirement that an employer is notified of the commencement of an investigation, provided with a copy of an investigator’s final report, and notified of any action taken by the accreditation authority following receipt of a report.

### **Insurances**

Draft Regulation 16 provides that all accreditation must include a condition that the accredited professional holds an appropriate policy for professional indemnity insurance unless the applicant is an employee of the State or a council covered by another form of indemnity approved by the accreditation authority.

DPTI and the LGA exchanged correspondence in April and June 2018 (references 2016/13892/01 and ECM 662093). The exchange of letters outlined that the LGA through the Mutual Liability Scheme would maintain civil liability cover for all local government employees and/or authorised officers appointed to assessment panels and Joint Planning arrangements for the purpose of the Accredited Professionals Scheme, in accord with the Rules of the LGAMLS, as intended by the PDI Act. This was agreed on the understanding that:

- Changes would occur in the Regulations to the PDI Act to clarify civil liability responsibilities for Councils and Panel Members (as appointed) relating to the CAPs. The regulations would reflect the liability responsibilities as currently set out in the *Development Act 1993* (s56A) relating to Development Assessment Panels (DAPs).

It is noted that these matters have not been included in the draft Regulations.

### **Recommendations**

That the Regulations be amended to clarify civil liability responsibilities for Councils and Panel Members (as appointed) relating to the Council Assessment Panels (CAP). The regulations should reflect the liability responsibilities as currently set out in the *Development Act 1993* (section 56A) relating to Development Assessment Panels (DAPs).

## Financial Implications of the Scheme

The initial Discussion Paper identified that the Scheme will involve various costs and fees, which include:

- On-going training and development for professionals;
- Insurance;
- Accreditation fee;
- Registration fee; and
- Renewal fee.

While the LGA recognises that there will be costs involved in ensuring professionals maintain and enhance their skills, the LGA is concerned that many of these costs and fees may be incurred by both professional staff and/or councils and that these fees have not been clearly articulated.

The LGA is concerned that if these costs are borne by councils, it will place further cost pressures on councils.

The LGA is also concerned at the further impacts on regional councils where it is likely they will be exposed to significant additional costs in order to attract professional staff.

### ***Recommendation***

That DPTI enter in to consultation with the LGA and councils on detailed costs associated with accreditation and how these can be equitably met, particularly in regional South Australia.

## 4. Assessment Pathways Technical Paper

The manner in which the technical discussion papers have been released, with different but interlinked components of the system being dealt with separately, makes their content highly theoretical and accordingly difficult to respond to in a meaningful way. For example, critical analysis of the assessment pathways is inhibited by uncertainty around the content of the Planning and Design Code (the Code), and the significant information still to be determined by regulation.

If taken on face value, and in the absence of more detailed information about the Code, the examples provided in the Assessment Pathways Technical Paper indicate major change to current arrangements, for example all single storey dwellings being deemed to satisfy and multi-storey buildings performance assessed, and no public notification for buildings up to 6 storeys in height.

Councils would benefit from additional information from DPTI demonstrating a greater and more meaningful connection between the proposed Code and the assessment pathways provided for in the legislation.

The large number of issues noted to be resolved in future practice directions highlights the significant role the practice directions will play in the system, and an appropriate level of consultation with local government on these important tools is anticipated.

The substantial number of changes to the planning system and limited timeframes for their simultaneous implementation risks poor outcomes, as no time has been allowed for pilot testing and real-world application.

A preferable approach would be an orderly transition to some new aspects of the system first, adopting the full suite of changes over a longer period and allowing for troubleshooting and problem solving along the way to ensure the system works as intended.

### ***Recommendation***

That further discussions occur between the State Government and the LGA and councils to ensure appropriate arrangements are in place as the transition to the new planning system occurs.

## **Role of councils**

Under the changes described, councils will deal with a more limited range of development applications and have less involvement in development that makes up the local landscape. This raises a number of issues, including:

- Communities' expectations of their local government's ability to influence the local environment, and provide information about the planning system.
- Communities' expectations of councils to provide information about the planning system, and councils' ability to resource this community information role.
- Councils' ability to influence development compliance and enforcement, and ability to resource any involvement in compliance and enforcement.
- How important information for development assessment held by councils is accessed by relevant authorities (local knowledge, flood mapping, engineering advice, site history resources), and how councils recoup the costs of providing this information.

Work commissioned by the LGA has found that development assessment fees charged to applications cover only around 25% of real cost of the effort and resources involved. With that income stream reducing, alternative resources are required to ensure councils can continue to provide the support expected by their communities.

Despite councils' reduced role in the new system, in reality councils will continue to be the first point of communication for members of the community and will continue to have an interest in development matters affecting their communities.

### **Recommendations**

1. The State Government develop an implementation plan in consultation with councils and the LGA that details how the new system and responsibilities will be effectively communicated with the public, and how councils will manage and resource community inquiries.
2. That further clarification be provided around how important information for development assessment held by Councils is accessed by relevant authorities (local knowledge, flood mapping, engineering advice, site history resources), and how councils will be resourced to provide this information.

## **Elements of development**

Greater clarity and consistency is sought around the use of the term “elements”. The Assessment Pathways Technical Paper suggests segmenting developments into “elements” for the purpose of assigning different categories of development, relevant authorities and notification requirements. For example, within one application a setback could be performance assessed and a height deemed to satisfy, and these assessments could occur in no particular order.

Best practice planning and urban development integrates consideration of form, function and impacts to enable the best outcome for the community. Considering an application as a collection of parts or impacts rather than a holistic development invites the risk of artificial outcomes and manipulation of the system. It further seems counter to the goal of a streamlined, efficient system that provides certainty for all.

Notification of individual components in particular has potential to create uncertainty and frustration in the community where certain information about a single development proposal is publically available and other information is withheld.

### **Recommendation**

1. Definition and practice guidance around the term “elements”.
2. Further information be provided by DPTI to demonstrate how the separation of development components will contribute to sound development outcomes.

## **e-Planning**

Greater clarity is required in how the e-Planning system will accurately process development information and be accessible to all members of the community.



Members of the community are likely to seek intensive support from councils to assist them with lodgement or lodgement on their behalf. This will place significant pressure on councils' administrations.

### ***Recommendation***

1. A detailed Communications and Implementation Plan be prepared and resourced to support transition to the e-Planning system.

## **Deemed planning consent**

A significant change introduced in the new system is the deemed planning consent of applications for which the assessment period expires, in place of the 'deemed refusal' under the current Act. Coupled with the reduced ability of relevant authorities to request information, this change is ostensibly to increase speed and efficiency of development assessment.

In practice, deemed consent is a disincentive to constructive negotiation between the relevant authority and the applicant to reach an outcome that suits both the developer and the public interest. Deemed planning consent is more likely to create an adversarial assessment environment. Consequences of deemed consent could include more refused applications, more legal action, a reliance on the use of conditions to try to achieve better development outcomes, and ultimately poor development outcomes that negatively impact the community.

The lack of flexibility in assessment timeframes and "high stakes" introduced by deemed planning consent does not consider real world context such as the interplay of assessment timeframes with Council Assessment Panel meeting schedules.

A deemed planning consent should not be applicable in cases where the timeframe is extended due to a referral agency requesting additional information or amendment or where additional information is sought and not provided in full.

### ***Recommendation***

1. A deemed planning consent should not be applicable in cases where the timeframe is extended due to a referral agency requesting additional information or amendment or where additional information is sought and not provided in full.

## **Consent pathways**

The Technical Paper highlights a number of options for achieving planning consent, including outline consent, staging in any order, and hybrid consents, in addition to the development categories and corresponding relevant authorities, and notification and referral requirements. There is concern that this may result in increased complexity in development assessment, counter to the objectives of reform.

The notion of outline consents in particular raises questions such as whether applicants can avoid public notification if a single element (e.g. height) is consulted on at outline stage, and whether an application can be refused on elements that were not part of the outline consent. These matters should be clarified through the regulations or practice direction.

While it is recognised that consents in any order is a provision of the PDI Act, it seems inefficient for applicants to allow building rules consent before planning. It is suggested that the regulations

limit this provision to applications for development where built form and land division applications are required.

Further information and clarity is sought around the types of development likely to go to a Design Review Panel.

### **Recommendations**

1. Further detail, clarity and rationale be provided, including the preparation of detailed examples, for outline consents and Design Review Panel applications.
2. That the regulations limit consents in any order to development where built form and land division applications are required.

## **Relevant authorities**

The expanded role of the private certifier as described by the Technical Paper raises concerns around transparency of process, accountability, and the integrity of the system in their role as a 'public officer'.

The concept of a public officer is defined in Schedule 1 of the ICAC Act. It includes "a person who constitutes a statutory authority" and also a person declared by regulation to be a public officer. Regulation 19 of the ICAC Regulations declares additional persons to be public officers for the purposes of Schedule 1 of the Act. This Regulation presently includes "a private certifier within the meaning of the Development Act". The ICAC Regulation should be amended to reference an accredited professional within the meaning of the PDI Act such that private certifiers will continue to be public officers under the ICAC Act when undertaking statutory functions under the PDI Act.

The LGA also seeks further clarification of the role of the Assessment Manager (as defined under section 87 of the PDI Act). There is potential for concern around the concentration of responsibility on one individual, and a need for more detail around how delegations might work in practice.

### **Recommendation**

1. That private accredited professionals by regulation act as a relevant authority only for deemed to satisfy (DTS) applications.
2. Further clarification and consultation with councils and the LGA around the practicalities of the Assessment Manager role.
3. The ICAC Regulation be amended to reference an accredited professional within the meaning of the PDI Act

## **Categories of development**

### **Deemed to satisfy (DTS)**

Entertaining the concept of minor variation in categorising DTS development similarly creates uncertainty and adds complexity to the assessment process.

By definition there should be no discretion in a quantitative DTS approach. Councils' experiences under the current system demonstrate that applicants will argue the notion of a "minor" variation to their advantage if it is available.

Councils' experience also shows that perhaps counter-intuitively, enabling flexibility in smaller scale, more routine developments results in more work for planners and less certainty for applicants. Smaller scale does not necessarily mean low impact, and determining what is "minor" takes time and expert judgement.

It is noted that other states (e.g. New South Wales) have code-based assessments with well-developed design guidance to support the system.

While the content of the Code will be the subject of further consultation, it is noted that the following types of development are not considered suitable for categorisation as DTS:

- Mixed use
- Licensed entertainment premises
- Nothing requiring conditions (e.g. hours of operation)
- ANEF/flood overlays
- Development with internal driveways
- Development with onsite waste management
- Development over easements

It is understood that that car parking will be a DTS provision. It is unclear how this will interface with associated assessment issues such as vehicle crossover locations and manoeuvrability.

There is scope to broaden the information provided by applicants for DTS applications beyond the current content of Schedule 5 of the Development Regulations. Application requirements for a variety of development types should be provided, and information requirements should be scalable based on complexity.

## **Performance assessed**

Of concern in the performance assessed pathway is the single opportunity for the relevant authority to seek further information. In reality, information or an amendment in response to a request for information raises further reasonable questions which should be responded to for a proper assessment to be completed.

Like deemed consent, restriction to a single information request may force relevant authorities to refuse applications that would otherwise be approved if the opportunity for further articulation of information and negotiation was present.

## **Restricted development**

The LGA is concerned with the loss of the requirement for concurrence with councils at the most complex level of development assessment. Further clarity is also required as to what the impacts of restricted development will be assessed against, if by definition it is inconsistent with the Code.

## **Recommendations**

1. Any application deviating from the quantitative deemed to satisfy criteria be categorised as performance assessed. No "minor" variations should be permitted.
2. Consider broadening and scaling information requirements for DTS development applications.
3. Provide an avenue for more than one information requests by a relevant authority where relevant to a sound assessment.

4. Incorporate a mechanism for councils to provide input into the assessment of restricted developments within their areas that will affect their communities
5. Clarify and provide greater detail on how the impacts of restricted development will be assessed.

## Development Approval

It is understood councils will be responsible for Development Approvals, including where they are not a relevant authority.

Based on councils' experience of applications assessed by private certifiers under the Residential Code, the LGA strongly supports a formal consistency check by councils prior to issuing Development Approval, with an appropriate fee charged for this important and often time-consuming task.

Consistency checking is particularly relevant where consents may be granted in any order.

### *Recommendation*

A consistency check be a formal part of the process of granting Development Approval, with fees charged accordingly.

## Notification

The removal of Category 2 public notification leaves no "middle ground" – either no one is notified or the general public is notified.

It is understood that representors have no statutory right to be heard, and therefore the decision will be at the discretion of assessment panels.

Signage as a form of notification raises questions around responsibility for design, consistency, fabrication and maintenance of signs, as well as their effectiveness in rural areas. Councils do not have the resources for producing, erecting, maintaining and removing signage for all notified development applications.

Using the e-Planning system, participation in making a representation relies on access to the internet and correct email addresses being entered. Clarity and accessibility of the system will be vital. For example, where elements only of an application are notified, it must be clear to members of the public which components of the application are open for comment.

The basic framework of notification should be in the Regulations, with reference to a practice direction that allows changes to be made without amending legislation.

Whilst it is understood that an Environmental Impact Statement (EIS) must be prepared and consulted on under s 113 of the PDI Act, it does not make it clear whether adjacent land owners and a sign are also required. It also does not specify that any of the other application documents need to be consulted on. This must be clarified for this most complex and potentially controversial category of application.

If public notification is undertaken at the outline consent stage it must be notified again at the planning consent stage to give the community the right to comment on all other elements of the proposal that are performance assessed.

## **Recommendations**

1. Clarify how the use of signage for public notification will be resourced.
2. A detailed Communications and Implementation Plan be prepared and resourced to support transition to the e-Planning system, with specific consideration of equitable access for all members of the public.
3. Details of notification processes to be contained in a practice direction in the context of a broad framework in regulation.
4. That the public notification requirements for restricted development are detailed more thoroughly.
5. That by regulation, an application notified at outline consent stage be notified again at planning consent stage.

## **Referrals,**

It is not clear from the Technical Paper the circumstances under which deferral of referrals will be allowed, and the purpose of this new aspect of the system is unclear.

A valuable feature of the current system is the concurrent consideration and integrated consideration of all major inputs before a planning decision is made. Referrals are fundamental to this and achieving high quality design

Often referrals can uncover important matters that should be resolved, and this can require changes to the plans that then need to be assessed by the relevant authority as well as the referral agency.

Referral to the State Heritage Branch for advice should be incorporated into the legislation, as a quantitative trigger for concurrence is not applicable. State Heritage referrals can result in useful conditions which a planning officer would not have the skills and knowledge to look for and enforce but which are critical to maintaining our important heritage places.

## **Recommendations**

1. Remove the ability to defer referrals.
2. Enable referral to the State Heritage Branch for advice in specified circumstances.

## **Other matters**

Minor variations to applications that do not trigger a new application should be allowed, however 'minor' should be defined and processes for documentation and record keeping clearly articulated, and appropriate fees charged.

In relation to Permits under the *Local Government Act 1999*, the Technical Paper states that a relevant authority (other than an accredited professional) may only grant approval after consultation with Council. The LGA's position is that "consultation" be replaced with "concurrence". It will create uncertainty and frustration for applicants to receive approval from a relevant authority but not necessarily receive the required permit from the council.

### ***Recommendation***

1. Minor variations to applications that do not trigger a new application should be allowed however minor should be defined and processes for documentation and record keeping clearly articulated, and appropriate fees charged.
2. In relation to permits under the *Local Government Act 1999*, that a relevant authority (other than an accredited professional) be able to grant approval only with the concurrence of the council.

## 5. Performance Indicators Discussion Paper

The LGA supports the establishment of a centralised indicator system which enables the monitoring of development activity across the State, and is overseen by the State Planning Commission.

However, the LGA is disappointed that the system is only to be used initially to capture basic development application activity.

The LGA is of the view that from the outset the system should be capable and being used to capture data which can inform the development of future policy and drive the planning system based on strategic objectives. In particular the system should be capable at the outset of capturing data which assists in informing the targets in the State Planning Policies, 30 Year Plan for Greater Adelaide and Regional Plans. This data should also be able to inform other key documents such as the State of the Environment Reporting, prepared by the EPA and report cards developed by the Department for Environment and Water.

It is also important that the meta data is made available to organisations including local government and in particular the Grants Commission to avoid duplication of information requests.

The provision of good data will help provide the evidence base required for future policy reform, collecting only basic information will not lead to evidence-based policy and reform.

### **Recommendations**

1. That the centralised indicator system captures information related to the targets in other key State plans.
2. Councils should be able to access meta data to support strategic planning investigations
3. The system should be accessible by the grants commission and other government agencies, enabling development information to be taken from the central system to support decision making.

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