17 October 2018

Ms Sally Smith
General Manager – Planning & Development Division
Department of Planning, Transport and Infrastructure (SA)
Via email:

Dear Sally,

ASSESSMENT PATHWAYS – HOW WILL THEY WORK? DISCUSSION PAPER (OCT 2018)

The Housing Industry Association (HIA) appreciates the opportunity to provide feedback on the proposed Assessment Pathways – ‘How Will They Work’ Discussion Paper and congratulates the work undertaken to provide a more efficient planning system.

HIA understands the importance that the overriding objective of the new system is to simplify the current system and rationalise the overwhelming plethora of often conflicting polices in a clear and concise way to encourage confidence and certainty in a more streamlined easily understood system. HIA is concerned that what is outlined in this paper may not contribute to this objective and could likely result in greater complexity and less certainty.

HIA maintains that one of the overarching principals of the Planning reform process should be that any new initiatives should not come at the cost of a negative impact on housing affordability. To ensure this is achieved a Cost Benefits Analysis should be undertaken as a priority to identify the impact of any initiative on residential building and land supply costs.

HIA has provided more detailed commentary on the most concerning aspects of the proposed Assessment Pathways Discussion Paper in the attached submission.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

Stephen Knight
EXECUTIVE DIRECTOR
South Australia
SUBMISSION BY THE
Housing Industry Association

DRAFT ASSESSMENT PATHWAYS
HIA COMMENT – ASSESSMENT PATHWAYS

The South Australian development community have been promised that the new planning assessment process will provide a more streamlined process with greater clarity providing a quicker and more transparent system. A system that reduces unnecessary red tape.

It is important to remind all those involved to be mindful that the overriding objective of the new system of should be to simplify the current system and rationalise the overwhelming plethora of often conflicting policies in a clear and concise way to encourage confidence and certainty in a more streamlined easily understood system. It is the view of the Housing Industry Association that much of what is outlined in this paper simply will not contribute to this objective but is likely to result in greater complexity and less certainty.

There are some potential benefits with the assessment system details outlined but these were foreshadowed several years ago in the review Panels final report, including for instance the following:

- Preliminary advice, outline consents, staged consents (excepting the proposal to allow consents to be obtained in any order which does not make sense to me) and deemed approvals.

- Less political appointments on assessment Panels with more independent experts/professionals.

- An apparent commitment to an electronic online DA lodgement and assessment process (provided it is adequately resourced).

Key issues/areas of concern are as follows:

- A proposed Design Review Process which is poorly articulated and aimed at producing better design outcomes but which actually raises the serious risk of high-jacking the system by allowing so-called design professionals with the control and power to dictate often subjectively what constitutes good design and what does not.

- While established by the new Act, the number of relevant authorities (Professional Assessment Manager, Assessment Panels (Council, Regional, Combined, Local and Joint Planning Board), State Planning Commission, Minister and Council and determining which level of authority should deal with an application (apparently this will be done at the time of lodgement of the DA) is likely to be confusing, uncertain, time consuming and inevitably lead to disputes.

- Categories of development (previously complying, merit or non-complying) are referred to as accepted, code assessed or impact assessed in the new Act but in the discussion paper are further articulated as: exempt, accepted, code assessed – deemed to satisfy, code assessed – performance assessed, impact assessed – restricted, impact assessed (not restricted). Rather than delivering on the aim of simplifying the current system it would seem that these additional categories are actually likely to complicate the system. Also, the category ‘code assessed – performance assessed’ is a contradiction in itself as code and performance assessment approaches are diametrically opposed methodologies.
Currently, whether or not to consider an application for non-complying development is in most cases made by the Council as the relevant authority with the Commission’s concurrence required for approval, the new Act appears to provide that only the Commission (or its delegate) can decide whether to proceed with a ‘restricted’ development application. While this might now be set in concrete by the new legislation it does represent greater control over these forms of development by the State Government. The key question posed in the discussion paper is what principles should be used to determine this new category of development in the Code – surely as the proponents of this category of development this question requires the State to first articulate what it considers these principles should be?

While now enshrined in the new Act, the change of definition of ‘adjacent land’ has undesirable consequences for the public notification process in that the ‘60 metre’ provision of the definition will mean that more properties than necessarily impacted by a particular development will be notified. This is clearly nonsense and inappropriately removes the need for professional judgement about the actual extent of properties likely to be impacted by any proposed development. The discussion paper does not appear to offer any solution for this issue but it is assumed it is cited as providing some justification for what is proposed on the subject of notification generally however it is not clear what this is. It appears that the Act also provides for a sign to be placed on land the subject of a publicly notifiable development application (as exists interstate) yet no evidenced-based justification ever existed for this change as was pointed out during the review process by the industry.

Somewhat incredibly (given the lengthy amount of time that has elapsed since the final planning reform report was delivered a number of years ago), the paper does not offer any suggested timeframes for decisions on applications under the new Act. Surely, given the objectives of the new system, the goal should be to substantially reduce current time frames? The purpose of the Planning reform is to provide a more simpler and efficient system, HIA maintains that time frames should be reduced by at least 50% from those currently in place.

Summary of key questions

Q1 Code assessed applications are assigned to an assessment panel, except where the regulations assign an assessment manager or accredited professional. What should be considered when assigning these relevant authorities?
A1 HIA submit at the core of any Planning and Development system there must be a high degree of certainty for all parties involved and as part of the development of such a system. Rigorous consideration must be given to ensure unintended consequences are not inadvertently designed into the system.
Assessment Managers and or Accredited professionals must be fully cognisant of the broad range of considerations that must be given when assessing and application including all economic factors and the consequence of their assessment, where relevant, particularly in relation to housing affordability. Assessor must be able to demonstrate an awareness of recommendations made following their assessment that will feed into the determination on matters such as applicant holding costs and costs of anything more than minor redesign.

It is understood by HIA that Code assessed applications are intended to provide an efficient assessment stream for the particular types of applications so as not to unnecessarily overload other government resources. HIA is supportive of processes and mechanisms with the planning system that provide for timely and efficient decisions making and therefore

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supports planning provisions allowing Code assessed applications. Further, it is important to note HIA considers the intent and purpose of Code assessed application must clear and understood by all parties involved, this is a responsibility of State and Local Government and can be achieved through the range of opportunities government has to disseminate such information.

Q2 Should the current scope of ‘exempt’ development be expanded to capture modern types of common domestic structures and expected works?
A2 Yes, HIA supports the current scope of ‘exempt’ development being expanded to capture modern types of common domestic structures and expected works. Further consultation with industry may be required to determine the types of development that could be considered ‘exempt’ development.

Q3 Should the current scope of ‘building consent only’ development be expanded to allow for more types of common development with minor planning impacts?
A3 Yes, HIA supports the current scope of ‘building consent only’ development being expanded to allow for more types of common development with minor planning impacts.

Q4 How should the scope of a ‘minor variation’ to deemed-to-satisfy development be defined?
A4 It may be appropriate that Minor variations be considered in the context of the likelihood to create adverse amenity potential and or material detriment, if either of these scenarios are likely to occur then it is assumed it would be difficult to mount a case that the variation is minor.

In order to try and do away to the greatest extent possible any subjective assessment as to what adverse amenity potential and or material detriment may be it would be worthwhile consulting with industry to develop some design metrics to guide minor variations whilst still allowing within the planning system adequate design response and innovation.

Q5 Are there some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height)? Are there other things that don’t matter as much for the purposes of notification?
A5 When developing a robust and efficient planning system HIA submit there must be adequate allowance for designers, builders, applicants etc. to explore various design options and have the opportunity to be innovative in terms of the design response, this may at times require designing outside the regulatory box in order to achieve a better design outcome and this should not be penalised with additional planning hurdles to overcome such as notification which add to time and cost.

HIA does not consider there are some elements of a project that should always be notified if the deemed-to-satisfy criteria are not met (e.g. buildings over height).

Q6 What types of performance assessed development should be assessed by an Assessment Panel?
A6 Class 1 dwellings greater than 3 stories, Classes 2 greater than 3 stories and Class 5 > 9 buildings larger than 500 square metres should be assessed by the Assessment Panels.

Q7 What types of principles should be used when determining ‘restricted’ development types in the Planning and Design Code?
A7 Impacts on adjoining zones, and matters of state significance environmental, tourism etc.
Q8  How should restricted development be assessed? What other considerations outside of the Code should be taken into account?
A8  Impacts on adjoining zones, and matters of state significance environmental, tourism etc.

Q9  What scale of development and/or impact types would be suited to the impact assessment (not restricted) pathway?
A9  No comment.

Public Notification

HIA Opening statement re Public Notification – HIA acknowledge that Public Notification can play an important role in the planning process, by allowing immediate adjoining and abutting landowners and occupiers and in some limited instances the broader community it can at times add value to the planning process. However, it is important that this part of the planning process be managed and dealt with responsibly by all who take part in it. It has not been uncommon that in other jurisdictions those that have the right to object and or make a submission have lodged an objection that is either unwarranted, frivolous and or vexatious and because of this an application can become unreasonably protracted leading to greater holding costs that then negatively impacts on housing affordability as ultimately these costs must be passed on to the first purchaser.

It is important that any regulation etc. dealing with Public Notification be appropriately structured and worded so as compliment and play a role in the overall planning assessment and determination process and strongly discourage any objections / submissions that are unwarranted, frivolous and or vexatious.

In noting the above Open Statement HIA provides the following brief answers to the following four questions.

Q10  Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?
A10  The 60m notification zone in some instances may be insufficient and excessive in others, locally based accredited professionals in touch with their local community and issues should make a value judgement about the actual extent of properties likely to be impacted by any proposed development.

Q11  Who should be responsible for placing a notice on the subject land?
A11  The HIA does not support a sign.

Q12  How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?
A12  The HIA does not support a sign.

Q13  For how long should an application be on public notification (how long should a neighbour have to provide a submission)? Should a longer period apply for more complex applications?
A13  14 days max.

Q14  What type of information should be submitted with deemed-to-satisfy applications? Are the current requirements in Schedule 5 of the Development Regulations 2008 sufficient/too onerous?
A14  Schedule 5 requires updating with Industry consultation.
Q15  Should relevant authorities (including accredited professionals) be allowed to
dispense with the requirement to provide the mandatory information listed by the
regulations/code/practice directions?
A15 No creates confusion where mandatory notifications are required – especially where
expiation fines are applicable for failure to notify.

Q16  Should a referral agency or assessment panel be able to request additional
information/amendment, separate to the one request of the relevant authority?
A16 No! past experience and delaying practices (stop the clock) are often used.

Q17  Should there be an opportunity to request further information on occasions where
amendments to proposal plans raise more questions/assessment considerations?
A17 No! past experience and delaying practices (stop the clock) are often used.

Q18  How long should an outline consent be operational?
A18 Development Consents should be commenced within the 36 months and completed
within 5 years. The property documentation should be remain accessible for the life of the
building limited to the owner and or their representative.

Q19  When, where and for what kind of development would an outline consent be
appropriate and beneficial?
A19 Unlimited benefit.

Q20  What types of relevant authorities should be able to issue outline consent
A20 Local authorities involved in the development approval process.

Q21  What types of development referrals should the regulations allow applicants to request
for deferral to
a later stage in the assessment process?
A21 Referrals that may have an effect on the structural design of the building or site works.

Q22  The Act stipulates that preliminary advice may be obtained from agencies. Should
there also be a formal avenue for applicants to seek preliminary advice from the relevant
authority?
A22 YES! Local accredited professional should be able to provide preliminary advice
without fear of liability or prosecution.

Q23  Should there be a fee involved when applying for preliminary advice.
A23 Attaching a fee to seeking preliminary advice will force those professionals unwilling
to give advice to do so, which could be a good thing. Deemed to Satisfy type development
for Class 1 &10 development should have no fee attached. Large Impact type development
could have fees attached, but that may then attract some level of liability and rightly so
when fees are attached.

Q24  How long should a relevant authority have to determine a development application
for each of the new categories of development?
A24 There should be a sliding scale depending on the Classification of the building, Class
1 & 10 maximum 2 weeks but this should remain as a competitive issue for industry.

Q25  Are the current decision timeframes in the Development Act
1993/Regulations 2008 appropriate?
A25  NO! Class 1 & 10 should have 2 week maximum turn around > sliding scale for larger developments in CBD. Development Approval should remain at 5 business days, and then Deemed that Consent has been granted. The 10 days for Council to appeal should be reduced to 5 days because the effect will be that development cannot really commence unless the applicant takes a gamble.

Q26 Should a deemed planning consent be applicable in cases where the timeframe is extended due to:
   - a referral agency requesting additional information/amendment
   - absence of any required public notification/referral
   - any other special circumstances?
A26 Yes

Q27 What types of standard conditions should apply to a deemed consent?
A27 Requires further industry consultation

Q28 What matters should addressed by a practice direction on conditions?
A28 Requires further industry consultation

Q29 What matters related to a development application should be able to be reserved on application of an applicant?
A29 Referrals that may have an effect on the structural design of the building or site works.

Q30 Should the scope for ‘minor variations’ - where a new variation application is not required - be kept in the new planning system?
A30 YES Planning & Building Consents

Q31 Should a fee be required to process ‘minor variations’?
A31 No fee

Q32 What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current Development Regulations 2008)?
A32 None

Q34 Are there any other forms of development/work that should be included in the definition of ‘essential infrastructure’?
A34 No.