

RECEIVED

17 Oct 2018

DPTI



**Civic Centre**

128 Prospect Road

PO Box 171

Prospect SA 5082

Telephone (08) 8269 5355

Facsimile (08) 8269 5834

[admin@prospect.sa.gov.au](mailto:admin@prospect.sa.gov.au)

[www.prospect.sa.gov.au](http://www.prospect.sa.gov.au)

Ref. CR/50583

17 October 2018

Ms Sally Smith  
General Manager Planning & Development  
Department of Planning Transport & Infrastructure  
GPO Box 1815  
Adelaide SA 5000

c/- [DPTI.PlanningEngagement@sa.gov.au](mailto:DPTI.PlanningEngagement@sa.gov.au)

Dear Sally

**Accredited Professionals, Assessment Pathways & Performance Indicators**

We write to you regarding your consultation on the above elements of the new planning system to be introduced under the provisions of the Planning Development and Infrastructure Act 2016.

Council has considered the draft documents and information released and has provided detailed comments on each document via attachments to this letter.

Overall Council is of the view that the initial intent of the planning reform process to introduce a responsive planning system that involves less red tape and is easier for the community (not just practitioners) to understand is difficult to see in a number of the proposed elements of the PDI Act 2016.

The Assessment Pathways proposed do not appear simple for the general population to understand, particularly the concept of Outline Consents and splitting of development applications into pieces. The proposed public consultation process where certain elements only of developments undergo notification can also be questioned as to its transparency and equity. We also see a risk in this process where the process may be exploited by some applicants.

As the level of government closest to communities, Councils will be responsible for explaining the new planning system and assisting the community to navigate the process. At this stage Council is of the view that the proposed system is not clearly creating a simple and transparent system for our community.

City of Prospect is committed to being a positive participant in the introduction of the Planning Development and Infrastructure Act 2016 and is willing to work with the Department of Planning Transport & Infrastructure and State Planning Commission to plan, develop and implement a planning and development system that will serve South Australia well for many years to come. I understand you have had similar discussions with our CEO Cate Hart and our offer to be an integral (lead) player still remain.

Should you wish to discuss the matter further please contact me at the Council office or via email

Yours sincerely



**Nathan Cunningham**  
Director Community & Planning

Encl.

Attachment 1 Assessment Pathways  
Attachment 2 Accredited Professionals  
Attachment 3 Performance Indicators

## Attachment 1 Assessment Pathways

Issue – Assessment Pathways	City of Prospect Comment
<p>Engagement &amp; Consultation</p> <p>Ad-hoc release of information on the implementing of the PDI Act 2016</p>	<p>Stakeholders are currently being ‘drip fed’ information on how the key elements of the new planning system will be developed and implemented making a full appreciation of the changes difficult.</p> <p>Without the ‘bigger picture’ it is difficult to respond in a meaningful way to separate elements of the new system.</p> <p>In particular, more detailed information is required relating to the connection between the Planning and Design Code and the assessment pathways provided for in the legislation.</p> <p>City of Prospect requests that a clearer picture of how each new element of the planning system will work with the other elements be provided in all consultation material that is released from this point.</p>
<p>Simple, Transparent and Equitable Assessment Process</p>	<p>As part of the Planning Reform process and PDI Bill much of the dialogue and objectives around reform related to the need to establish a planning system, and in particular a development assessment process, that was simple to understand, would provide transparency and equity and a strong role for good design.</p> <p>City of Prospect queries whether these key objectives are being achieved in the proposed Assessment Pathways.</p> <p>The concepts of; ‘deemed to satisfy’ applications that don’t meet the ‘deemed to satisfy’ provisions but still getting approved,</p>

Issue – Assessment Pathways	City of Prospect Comment
	<p>splitting development applications into small pieces to only deal with parts of the impacts and not the whole development, confusion around what are 'elements' of a proposal, undertaking notification of parts of a development application but not others, how feedback on other parts/ elements are considered or refuted, and the role of Council being limited in many instances to record keeping are not simple concepts and will be difficult to explain to communities. It will be local government who has to assist residents and communities to navigate the new system and currently this appears very difficult.</p> <p>City of Prospect considers that the new Assessment Pathways should be reconsidered with the key objectives of simplicity, equity and transparency as the driving principles of the new planning assessment process.</p>
Design & Character	<p>One of the original intentions of the planning reform process was to achieve better design outcomes in our urban areas. The 'deemed to satisfy' assessment pathways seems unlikely to achieve this outcome.</p> <p>City of Prospect expects the implementation of the PDI Act 2016 to provide strong planning policy that focuses on quality outcomes and design that adequately recognizes and protects existing character.</p>
Design & Character	<p>The potential lack of design related criteria for 'Accepted' or 'Deemed to Satisfy' development is of a concern to Council and the community.</p> <p>City of Prospect considers that design criteria should form part of 'Deemed to Satisfy' policy. This should also be reflected in the skills and experience requirements of</p>

Issue – Assessment Pathways	City of Prospect Comment
	Accredited Professionals.
Design & Character	<p>A tick box approach in relation to 'Deemed to Satisfy' does not adequately address the suitability of development within complex streetscapes requiring nuanced design assessment. These are the issues that planners face each day throughout the suburbs and towns across the State, and the system does not seem to address this.</p> <p>City of Prospect considers that 'Deemed to Satisfy' provisions should not extend to infill development within established character streetscapes that are identified as worthy of retention and enhancement.</p>
Local policy, identity and character	<p>City of Prospect is of the view that Desired Character Statements and the need to clearly identify the future character of local areas, is a key element of current Development Plans and this element should be preserved in the new assessment pathways model. It is understood that the ERD Court look for guidance from these statements and their removal may leave a policy void where greater interpretation (and less certainty) exists.</p>
Role of Local Government	<p>It is clear that the proposed changes to the planning system will lessen the involvement of local governments in the planning assessment process while increasing the role of private certifiers.</p> <p>This is of concern to Council and its community as local knowledge and expertise is an important component of the planning process.</p> <p>Despite a lesser role in planning assessment, Council will clearly remain the first port of call for communities for information on</p>

Issue – Assessment Pathways	City of Prospect Comment
	<p>planning and complaints about development or compliance with approvals.</p> <p>Given that local government already heavily subsidised its planning functions, the reduction in planning fees will only increase the cost impost on local government and therefore the cost on communities.</p> <p>City of Prospect is of the view that the funding of the entire planning system and the various roles and responsibilities within it need additional exploration.</p>
Partial Consents	<p>The Assessment Pathways Technical Paper suggests that the segmenting of developments into “elements” for the purpose of assigning different categories of development, relevant authorities and notification requirements will be possible.</p> <p>Best practice planning and urban development integrates consideration of form, function and impacts to enable the best outcome for the community.</p> <p>Considering an application as a collection of parts or pieces rather than a holistic development invites the risk of poor outcomes. It also potentially opens the system to applicants seeking to explore (or exploit) any loopholes through a drip-fed approach to the proposal.</p>
Public Notice	<p>Public notification of individual components of a development application e.g. undergoes public notice as it exceeds a height limit but does not allow any public comment on design features, has potential to create great uncertainty and frustration in the community where certain information about a single development proposal is publically available and other information is withheld or not</p>

Issue – Assessment Pathways	City of Prospect Comment
	<p>allowed to be commented on and considered by a relevant authority.</p> <p>City of Prospect would support a planning system where those who will be significantly impacted by a proposed development are given a right to comment and be involved in the decision making on that proposal.</p>
Deemed Consents	<p>A significant change introduced in the new system is the ‘deemed consent’ of applications for which the assessment period expires. Coupled with the reduced ability of relevant authorities to request information, this change seems to relate to increased speed and efficiency of development assessment.</p> <p>Deemed consent seems to be a disincentive to negotiation between the relevant authority and the applicant to reach an outcome that suits both the developer and the public interest. Consequences of deemed consent could include more refused applications, more legal action, a reliance on the use of conditions to seek ‘better’ development outcomes, and ultimately poor development outcomes that negatively impact the community.</p> <p>The deemed consent process seems to not consider context such as the interplay of assessment timeframes with Council Assessment Panel meeting schedules.</p>
Assessment Pathways	<p>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, as well as notification and referral requirements. There is concern that this may result in increased complexity</p>

Issue – Assessment Pathways	City of Prospect Comment
	<p>in development assessment, counter to the objectives of the planning reform process.</p> <p>The notion of outline consents 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.</p> <p>City of Prospect supports an approach where good planning policy dispenses with the need for outline consents.</p>
Deemed to satisfy	<p>Allowing minor variations in categorising deemed to satisfy development creates uncertainty and adds complexity to the assessment process. This is particularly of concern given the proposed experience levels of a Level 4 planning certifier who could be making these decisions.</p> <p>City of Prospect believes that there should be no discretion in a quantitative deemed to satisfy approach e.g. if it does not meet the deemed to satisfy provisions then it cannot be a deemed to satisfy assessment. Councils' experiences under the current system demonstrate that applicants will argue the notion of "minor" to their advantage if it is available.</p> <p>Enabling flexibility and 'minor' departures in small scale development can result in less certainty for applicants and neighbours. Smaller scale does not necessarily mean low impact, and determining what is minor and an understanding of local context takes time.</p>

## Attachment 2 Accredited Professionals

Issue - Accredited Professionals	City of Prospect Comment
Private Certifiers	City of Prospect considers that private certifiers should not be able to undertake performance based assessments, particularly within areas of sensitive (or strong) local character.
Private Certification	City of Prospect considers that private certifiers should not be able to undertake the assessment of development applications that require public notification.
Private Certification	<p>City of Prospect considers that further thought is required relating to the checks and balances that are built into the private certification process in order to limit opportunities for conflicts of interest.</p> <p>Also if a private certification system is to be introduced then the qualifications, experience and standing of private certifiers must be extremely high to provide the community with confidence that appropriate professionals are making decisions that are in the best interests of the whole community rather than only a single land owner or their clients.</p>
Accreditation	<p>The intent of accrediting professionals was to ensure that decisions were being made by appropriately qualified individuals to provide certainty and confidence in the planning system. On that basis the levels of experience required at lower levels of planning accreditation (e.g. Level 4, 1 year of professional experience) are considered too low to provide confidence in decision making.</p> <p>City of Prospect is of the view that private planning certifiers (Level 3 &amp; Level 4) should have significantly more development</p>

Issue - Accredited Professionals	City of Prospect Comment
	<p>assessment experience before being accredited to make planning decisions which can impact on neighbours and on streetscapes. The direction of where to/ how to complain about private certifiers and their decisions is unclear and needs greater consideration.</p>
Accreditation	<p>It is unclear why there is a requirement for Level 4 Planning Accreditation – what is the purpose of this level of accreditation given its low level of experience and the fact that Level 3 can grant consents for ‘deemed to satisfy’ development?</p> <p>One year of professional experience is not sufficient to be making independent decisions with no oversight, especially where making judgement calls on departures from deemed to satisfy applications.</p>
Accreditation	<p>When both Level 1 and Level 3 Accreditation roles are a ‘relevant authority’ in their own right, why the different levels of experience?</p> <p>Assessment Managers will likely be subject to more public scrutiny in their role with a Council (and their decisions can be appealed to Council CAP), yet they are required to have more experience than a Level 3 certifier making independent decisions with no oversight.</p> <p>City of Prospect is of the view that a Private Certifier should be required to be Level 1 accredited to ensure that only people with significant development assessment experience are making these decisions.</p>
Assessment Managers	<p>City of Prospect seeks further clarification of the role of the Assessment Manager. There is concern around the concentration of responsibility on one individual, and a need for more detail around how delegations from the Assessment Manager to Council staff</p>

Issue - Accredited Professionals	City of Prospect Comment
	might work in practice. There is concern that qualified planners will actually not want these jobs.
Assessment Managers	If an Assessment Manager (Level 1 Accreditation) is also approving development as a private certifier (e.g. Assessment Manager at a country Council and also a private certifier) they appear to need to be Level 1 and Level 3 accredited. Similarly if a individual is on a CAP they will require Level 2 accreditation as well as Level 1 or Level 3. This seems to be an unnecessary administration process when any professional who is qualified at Level 1 should be able to undertake all other roles.
Accreditation	<p>Given that the Accreditation process relates solely to development assessment the experience required to be demonstrated should be more heavily focused on development assessment skills (e.g. the central skill to demonstrate in determining whether someone should be accredited is development assessment experience, with other skills complimenting this).</p> <p>There should be no mechanism that allows a planner with no direct development assessment experience to become a private certifier and make independent development assessment decisions.</p>
Accreditation requirements	As design should be a key element of the upcoming Planning and Design Code this should also be reflected in the skills and experience requirements of Accredited Professionals.

### Attachment 3 Performance Indicators

Issue - Performance Indicators	City of Prospect Comment
Are current System Indicators useful?	<p>City of Prospect is of the view that the current System Indicators Scheme lacks purpose or utility. City of Prospect is not aware of any evidence that the data collected through the current System Indicators Scheme has ever been used for any direct purpose by the development industry, Local Government, DPTI or the Planning Minister.</p> <p>Compounding concerns regarding this lack of utility is the substantial resource implication upon Local Government involved in the collection of this data, principally due to the non-strategic structure of the current System Indicators Scheme. This concept is explored further in our submission.</p>
Lessons Learned from 2010 Review of System Indicators	<p>A series of comments and recommendations from Local Government regarding the current System Indicators Scheme were well summarised within an LGA submission regarding the 2010 System Indicators Review. City of Prospect considers that each of the key findings of that submission remain entirely relevant (i.e. no changes were made to the current System Indicators Scheme that resolved any of the concerns or recommendations identified).</p> <p>A summary of those findings is provided below:</p> <ul style="list-style-type: none"> <li>- The 'clause-by-clause' approach to preparing indicators should be replaced by an approach that considers the key elements of a 'healthy' system and accurately captures data on these items;</li> <li>- The indicators should align to</li> </ul>

Issue - Performance Indicators	City of Prospect Comment
	<p>relevant interstate or national frameworks (such as the COAG National Indicators);</p> <ul style="list-style-type: none"> <li>- There is no evident process that ensures that the data collected is used to drive better practice;</li> <li>- There is no dedicated support mechanism in place driving the collection of System Indicators data;</li> <li>- Each review of the System Indicators Scheme appears focussed on increasing the quantity of indicators, rather than focussing on developing a high quality set of indicators that is reliable and meaningful.</li> </ul> <p>City of Prospect recommends that further consideration be given to the entirety of the LGA submission (and City of Prospect would be happy to provide a full copy of this submission if necessary).</p>
<p>Is the information in the annual report released by the Planning Minister useful?</p>	<p>The Minister's annual report does not appear to have any purpose, beyond achieving the minimum statutory requirement that prescribed information be collected and published.</p> <p>The data is aggregated for inclusion in the report without any visible analysis or context being applied to it. By way of example; no trend analysis is undertaken across time, no relationship is drawn between policy or legislative change and system outcomes, nor is the data considered against the context of market trend analysis.</p> <p>As the information has no apparent purpose, it is unclear in what way this data may be</p>

Issue - Performance Indicators	City of Prospect Comment
	considered useful.
<p>What parts of the existing System Indicators Program should be 'carried over' to the new Scheme?</p>	<p>As identified in the LGA submission summary above, this question approaches the task of establishing a new Performance Indicators Scheme in fundamentally the wrong way.</p> <p>Any suggestion that current System Indicators data should be 'carried over' into the new scheme, without a clearly aligned purpose, is entirely at odds with the findings of the 2010 review; namely that the existing System Indicators scheme is poorly designed and serves limited function.</p> <p>It is unclear why any elements of an unsuccessful scheme should be 'carried over' without significant further consideration as to their utility within the new scheme.</p>
<p>Purpose of Performance Indicators</p>	<p>Noting the comments above, City of Prospect considers that the Discussion Paper should have more carefully considered the intended purpose(s) of the new Performance Indicators scheme.</p> <p>Having established a clear purpose, a data collection structure could be established that allows for cogent, comparable data to be collected for analysis inherent to the ePlanning solution.</p> <p>During a recent drop-in session, City of Prospect understands that the intended purposes of the new scheme may include:</p> <ul style="list-style-type: none"> <li>- Trend Analysis;</li> <li>- System Monitoring; and</li> <li>- Development Outcome Analysis.</li> </ul> <p>City of Prospect supports these purposes, but notes that they will <u>not</u> be achieved by 'carrying over' existing system indicators.</p> <p>In relation to System Monitoring, the Performance Indicators Scheme should begin</p>

Issue - Performance Indicators	City of Prospect Comment
	<p>by understanding the process involved in the application of the new planning system's Assessment Pathways. Entry, exit and checkpoint data indicators can then be established in relation to each process that can be measured, as well as complexity data (such as development cost, public notification process, development scale, etc.) that contextualises the data for comparison against other regions.</p>
<p>Alignment with Other Data Collection Frameworks</p>	<p>The discussion paper does not appear to give any consideration to the desirability (or otherwise) of ensuring that the new Performance Indicators scheme aligns with interstate or national data collection frameworks.</p> <p>Most notable amongst these is the Functional Classification of Buildings (FCB) framework developed by the Australian Bureau of Statistics (ABS). This framework has been carefully curated over a substantial period of time to allow for longitudinal studies of approvals and built outcomes at any geographic scale from SLA to National.</p> <p>It is for this reason that technology companies providing development assessment software solutions typically design the architecture of the solution around the FCB. City of Prospect's system (Authority) is one example of such a system that is commonly used by Local Government and designed to inherently capture necessary data for the ABS.</p> <p>Put simply, it is the current lack of alignment between the existing System Indicators scheme and any other data capture scheme that makes the collection of data so resource intensive upon Councils (and less accurate).</p>

Issue - Performance Indicators	City of Prospect Comment
Structural Relationship to E-Planning Solution	<p>Noting the above commentary regarding the FCB; if the structure for the new ePlanning solution does not understand current inherent data capture frameworks, it will create a significantly more difficult data capture regime for Councils moving forward.</p> <p>In relation to the ABS, any misalignment with the FCB would result in the monthly manual collection of this data by Local Government.</p> <p>While the discussion paper notes an intention to reduce the resourcing involved in data collection, a misalignment with the FCB framework would result in a <u>quadrupling</u> of the time and resources presently involved in the collection of data by Councils.</p>
Presentation of Data and Statistics - Examples of System Monitoring and Online Reporting Tools	<p>City of Prospect is concerned that the example system monitoring tools provided within the discussion paper are basic data aggregation tools, that are in many cases difficult to interpret and in all cases lack genuine utility.</p> <p>The Census Table Builder (hosted on the ABS website) is a considerably superior data analysis tool compared with the example data aggregation tools shown within the Discussion Paper. The Table Builder allows a user to filter data by various regional levels and timescales, as well as flexible analysis of related data sets against each other in an easy to interpret table format.</p> <p>It is considered that the way in which the data is presented must align to the intended purpose(s) of the Performance Indicators Scheme, and it may well be that multiple presentation types are required to achieve each purpose.</p> <p>City of Prospect would be happy to</p>

Issue - Performance Indicators	City of Prospect Comment
	<p>contribute positively to the development of data presentation tools, but is unable to provide meaningful recommendations in the absence of a clear purpose underpinning the Performance Indicators Scheme.</p>
<p>Data Collection and Interpretation</p>	<p>While much of the discussion paper addresses the accuracy of data collection, City of Prospect is also concerned with respect to the capacity to interpret and meaningfully analyse the data that is collected.</p> <p>A case study illustrating this concern recently arose in respect of a DPTI response to a Freedom of Information request lodged by The Advertiser. City of Prospect was asked to comment on certain aspects of the information that was provided by DPTI, however it was immediately evident that the summary information provided to The Advertiser departed significantly from the data supplied by Council through our System Indicators submission(s). The extent of the identified discrepancies (a 600% variance with respect to assessment timeframes) was of significant concern.</p> <p>City of Prospect considers that it is necessary for additional capacity to be established in the interpretation and analysis of data, in order for the new Performance Indicators Scheme to be successful.</p>