01 March 2019

Ms Sally Smith  
General Manager Planning and Development  
Department of Planning Transport and Infrastructure  
GPO BOX 1533  
Adelaide SA 5001

Dear Ms Smith

Re: draft Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019 and draft Practice Directions - Growth Area Council Officers’ Response

On the 22 February 2019 senior management from Playford, Salisbury, Onkaparinga, Mount Barker and Alexandrina Councils met to discuss the draft Planning, Development and Infrastructure (General) (Development Assessment Variation Regulations 2019 (Development Assessment Regulations) and the four draft Practice Directions currently on consultation (closing 1 March 2019). The purpose of this forum was to discuss and appreciate the impact of the proposed regulation changes with a particular focus on residential growth in a greenfield environment.

Of note, the Councils represented at the forum are responsible for facilitating approximately 95% of greenfield development and over 30% of the total new allotments created in South Australia across the 2017/18 financial year. It is considered that this group best represents growth area management from a local government perspective.

The Councils above continually strive for and are considered to represent best practice outcomes in terms of growth management and development assessment. This positive approach has been well established over many years and resulted in significant development outcomes and economic benefits for the State. It is disappointing therefore that the Development Assessment Regulations appear to be responding to issues and written in a posture which addresses poor practice as opposed to emulating and reinforcing best practice.

Senior staff from the aforementioned Councils considered the common priority issues and distilled this to three key areas being; relevant authority, timeframes and costs/resources. Generally speaking, the Councils felt that the way these matters, both individually and in aggregation, have been addressed in the draft Development Assessment Regulations has the potential to set current practices back years, significantly impacting the ability for both the private and public sectors to work in partnership to facilitate positive development and economic outcomes for our State.

The key areas of concern have been summarised below with suggestions made as to what alternatives might resolve them;
Relevant Authority

The current determination of relevant authorities, as per Regulation 22:
- Will see a significant increase in the number of applications for which CAP is the relevant authority, compared to the number of applications which are currently delegated to CAPs pursuant to each Council's delegations.
- Will result in increased costs to both Councils and developers.
- Will increase timeframes on some applications.
- Will result in poor planning outcomes with some applications.

It is recognised that CAPs can add value to the assessment process where a public debate on assessment matters is required. It is considered that public debate on matters does not however equate to an increased level of rigour in assessment as the Guide to the draft Development Assessment Regulations & Practice Directions intimates. Councils employ professionals who spend 100s of hours assessing applications before arriving at a decision. This is especially the case for growth area land division assessments where expert consultant reports are commissioned by the developer, which are then reviewed by various expert Council staff. The process and effectiveness of negotiation and agreement throughout the assessment process cannot be underestimated. Best practice Councils (such as the growth area Councils) seek to work in partnership with developers to achieve positive development outcomes and are resourced appropriately to do so. In this context, the growth area Councils are of the opinion that by placing an arbitrary 20 lot trigger for CAP to be the relevant authority in draft Regulation 22(1)(a)(iii)(D) will result in increased costs, extended timeframes and poor development outcomes for these land divisions.

An assessment undertaken by the growth Councils in this forum indicates that, based on current applications lodged and delegations, the number of applications to be considered by a CAP (as the relevant authority) under the draft Development Assessment Regulations could increase tenfold from the number of applications which they currently assess pursuant to Councils' delegations. This would result in significantly increased costs to Councils (in the order of $150,000 per annum) through the requirement to hold additional CAP meetings and prepare additional reports. By increasing the number of applications presented to CAP it will also increase costs to developers with applications having to be considered by a CAP (additional twenty business days pursuant to draft Regulation 56(1)(e)).

By way of example the following table indicates the increase of items which will be considered by CAP in Mount Barker as a result of the draft Development Assessment Regulations;

<table>
<thead>
<tr>
<th>Application Type</th>
<th>No. ref to CAP (current)</th>
<th>No. ref to CAP (proposed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cat 2/3 (publicly notified</td>
<td>17</td>
<td>124</td>
</tr>
<tr>
<td>applications)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greenfield Land Divisions</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>DAs over 5 million</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>139 (&gt;700% increase)</td>
</tr>
</tbody>
</table>

It is acknowledged that while CAPs, as the relevant authority, can provide a delegation to an Assessment Manager pursuant to Section 100 of the Planning, Development and Infrastructure
Act 2016 (PDI Act), this is not assured in all circumstances and is a significant risk to Councils who have well established, effective and suitable delegations.

Recommendations

1. Amend Regulation 22 by deleting the words "other than where" from Regulation 22(1)(ii) and deleting sub-subparagraphs (A) to (H). This would have the effect of removing CAPs as a relevant authority, and making Assessment Managers the relevant authority in their place. An additional regulation requiring that the Assessment Manager must delegate to CAP in the circumstance where there is a third party response to a notice of application under section 107(3) of the PDI Act could also be included. This approach enables the Assessment Manager to delegate decisions to CAP if an application is determined to be of significant social, economic or environmental interest.

2. As an alternative to 1 (above); an additional regulation could be inserted after draft Regulation 22 requiring that the CAP must delegate the decision on an application to the Assessment Manager in the circumstance where there is no third party response to a notice of application under section 107(3) of the Act.

3. Review the circumstances where a CAP is required to be the relevant authority.

Timeframes

In the context of the growth areas Councils, the timeframes proposed in the draft Development Assessment Regulations:
- Do not take into account achieving best practice and optimal planning outcomes.
- Do not take into consideration the limited resources available to Councils, particularly small and regional Councils.
- Will result in increased costs to Councils through requiring Councils to increase resources to meet the timeframes.
- Will result in an increase in adversarial outcomes rather than best practice outcomes.

It is considered the timeframes do not take into account those councils that currently strive for best practice or growth councils that are required to consider multiple complex applications at the one time which require councils to have on hand significant expertise and to work closely and negotiate with developers.

In this context, the mandated timeframes in Regulation 56 will result in reduced opportunities for negotiated best practice outcomes and increase adversarial approaches. This is particularly so as many Councils may be forced to make decisions before ‘time runs out’, due to the risk of a deemed consent notice being served.

Concurrent timeframes for public notification and referrals in Regulation 56(2) is considered to not result in best practice outcomes, and is unrealistic particularly where the referral agency may require amendments to the application requiring additional notification.

A 30 business day response time for agency referrals in Regulation 56(1)(h) is considered to be excessive, particularly given the scope of their response is limited in comparison to the full
assessment which must be undertaken by an Assessment Manager (which is only allocated 20 business days for performance assessed development).

Advice from the Commission to a relevant authority (Regulation 82) is 30 business days, while advice from a council CEO to the Commission (Regulation 23(2)(b)) is only 15 business days. For consistency these timeframes should both be 30 business days. Further, the matters on which the CEO may comment in Regulation 23(2)(b) are heavily constrained. It is considered that CEOs should be able to provide to the Commission information on all matters they consider relevant to the development assessment.

Recommendations

1. There should be increased timeframes for complex applications which require significant negotiations with developers to achieve positive outcomes.
2. The requirement for concurrent referral and public notification in Regulation 56(2) should be deleted and referral body response times should be reduced to 15 business days.
3. The Commission and Council CEOs should have comparable response times of 30 business days.
4. Regulation 23(3)(c) be amended to allow Council CEOs the ability to report to the Commission on all matters they consider relevant to the development assessment.

Costs and Resources

The draft Development Assessment Regulations:
- Will place additional cost burdens on Councils and Developers.
- Have resource implications on Councils which will further increase costs.
- Will potentially be seen as further cost shifting onto Councils.

It has been identified that various parts of the PDI Act and draft Development Assessment Regulations will result in increased costs to Councils without a clear understanding as to where cost savings can and will be achieved. Examples of these costs include:
- Increased costs of CAPs as a result of additional meetings - CAP member remuneration and Council resources in preparing and attending the meetings.
- Additional system costs as a result of the EPlanning system.
- Additional staff resources, providing assistance to applicants to lodge applications electronically, additional resources to achieve mandated timeframes, compliance, public education of the new system, and implementation of the building policies.
- Accredited professional’s accreditation fees and ongoing training for CAP members, the Assessment Manager and staff.
- Additional costs involved with public notification signs. It is also suggested there will be great difficulties with access and visibility in rural areas. Council staff resource costs to travel to remote areas for installation and removal.
Recommendations

1. Recommendations on issues provided in other parts of this submission have identified how costs can be reduced.
2. It will be important that local government is engaged with when the fee schedule is drafted, to ensure that the fees to be established enable cost recovery for Councils.
3. Full cost recovery is needed for Council and/or discretion to not require signs in rural areas. Recommended that public notice could be provided on the portal/ Council Website where it is considered a physical sign is not practicable.

In summary, it is considered that the proposed Development Assessment Regulations have the potential to significantly impact on the ability for growth area Councils and the development industry to efficiently deliver quality development outcomes for the State. The draft Development Assessment Regulations should reflect best practice and be amended to enable Councils (particularly those managing growth areas) to work proactively with their development partners. It is essential that appropriate delegations are established which recognise the value of negotiation, are not a resource burden for Councils and do not add increased timeframes and costs for the development industry.

As the senior management group responsible for managing the State’s most significant growth area Councils it was considered necessary to write to you and express the concerns of the group. The items stated above are brief and we would encourage a follow up meeting with you and relevant DPTI Officers to discuss our concerns further.

Yours sincerely

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On behalf of the Senior Officers of the 5 Growth Area Councils of SA

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