Dear Mr. Victory

Re: Assessment Pathways: How Will They Work / Accredited Professional Scheme - Draft Regulations / Performance Indicators Discussion Paper

Please find below the Town of Gawler’s (Council) response with respect to the following three papers released for public consultation:

- Accredited Professional Scheme – Draft Regulations
- South Australia’s New Planning System Performance Indicators Discussion Paper

Council wishes to thank the Department of Planning, Transport and Infrastructure and the State Planning Commission for the opportunity to provide input through the reforms process. We have endeavoured to accumulate feedback from Council Staff and Elected Members to provide professional and meaningful commentary regarding these discussion papers.

Feedback is provided under each of the discussion papers’ headings:


Council appreciates that the Assessment Pathways Technical Discussion Paper is a way of provoking conversation and generating analysis within the planning industry. Obviously some details are lacking and the purpose of such exercises is to help inform those details at a later date.

Noting this, the Town of Gawler provides the following comments in relation to the Assessment Pathways Technical Discussion Paper:
• Deemed Planning Consent

The notion of Deemed Planning Consents coming into effect through the Planning Development and Infrastructure Act 2016 (the Act) is not supported by the Town of Gawler. Although we appreciate this is dealt with under Section 125 of the Act, which is not anticipated to be brought back before the parliament, it is a section which has not yet been activated.

Council fundamentally disagrees with the concept and doesn't believe it will be of any benefit to the industry and, more importantly, our communities. Based on the information available at this point, it appears that planners who are responsible for assessing such applications will have no choice but to refuse applications where insufficient information is provided and the prescribed time frame is about to expire. A negative stigma is often attached to Councils regarding unwarranted delays in assessment however, Council staff are generally facilitative in their approach and this method may in fact be counterproductive.

The Deemed Planning Consent approach is likely to create rushed and poor outcomes, allowing the system to be opened up to possible questionable practices which would be difficult to prove but could, at worst, cause irreparable damage in the community.

• Referrals and Reserved Matters

The notion of a Referral being dealt with as a Reserved Matter is seen as completely counterproductive.

Although the paper states ‘should the applicant choose to defer a referral, they would need to accept any risk that the future referral advice may require amendment to the reserved consent’, this may achieve its goal of avoiding initial time delays however, it could engender a longer, more complex and confusing situation down the track when the referral is in fact sought. In reality, as referral agencies will have direction, the applicant may not even be able to proceed with the development in the case it is recommended for refusal.

If the referral is limited in its scope and consent is already provided, the concept of a referral where the professional advice of an expert is incorporated into a planning decision becomes completely redundant. It is hard to see how this approach will provide any benefit.

Key matters related to a development application which should be able to be reserved on request of an applicant include detailed design elements, where a sufficient concept plan has already been provided and is considered adequate for assessment.

• Practice Directions

The paper speaks of the Commission issuing a Practice Direction which will likely generate standardised conditions for common forms of development. It is appreciated that there could be merit in this approach so that planners can use this suite to save time when assessing common forms of development which require specific conditions of approval.
Planners should be provided the opportunity to modify these proposed conditions as required. If a stringent approach is taken where planners are not able to provide any flexibility to these anticipated conditions, it is likely to create poor outcomes.

- **Staged Consents**
  
The concept of applicants being able to obtain staged consents in any order is seen to be problematic in most scenarios. This approach could theoretically save an applicant time if their (hypothetical) application was perfect and presented no issues what so ever.

  However, if an applicant were to obtain building consent prior to planning consent and then, as a result of the planning assessment process, changes to the application were required, that applicant would then be required to go through the process of a variation to the building consent. Such an approach is likely to clutter the system and unnecessarily confuse applicants.

  Furthermore, this approach may inadvertently lure people into assuming that, because they have received building consent, they will automatically receive planning consent and, in instances where this is not the case, be a source of unnecessary frustration. The natural progression of consents works in the current system and is not a fundamental issue which requires reform.

- **Restricted and Impact Assessed Development**
  
  Development applications which are categorised as either Restricted or Impact Assessed are to be assessed by the Minister or Commission respectively. It is our understanding that these bodies will assess said applications without the need of concurrence from Council, which will now only have an opportunity to provide feedback on Restricted or Impact Assessed applications within their boundaries through the regular public consultation avenues.

  This removal of local government involvement is seen as a poor outcome for the community. Local Governments have an excellent knowledge base of their areas and pride themselves on providing genuine and constructive advice through their involvement in such processes.

- **Role of Accredited Professional with Code Assessed**
  
The paper seeks to generate discussion in relation to the roles of accredited professionals and what their duties into the future should be in relation to Code Assessed Development, both Deemed to Satisfy and Performance Assessed.

  Through a recent live stream chat conducted by DPTI, participants were notified that it was the intention of the Department that privately accredited professionals will not be able to assess any application which requires any form of public notification.

  It is Council’s understanding that private certifiers will not theoretically be able to assess a performance assessed development application. This approach would be supported by the Town of Gawler as this means the application would need to
be assessed by a Council appointed Assessment Manager or Council Assessment Panel.

This does however suggest that private certifiers could have a substantial role in relation to Deemed To Satisfy Development. Without seeing draft regulations it is difficult to provide comment in relation to what may be considered appropriate for assessment by a private certifier.

As previously iterated via submissions to DPTI in relation to the reforms, the introduction of the Residential Code has, to a degree, contributed to delays in assessments and some questionable development outcomes.

This is notwithstanding the errors in private certification, which are unable to be contested once a decision has been made without Councils seeking a judicial review.

The Town of Gawler would not wish to see the role of private certifiers increased beyond the current scope of the Residential Code.

In regard to Performance Assessed applications which will be assigned to accredited professionals, in place of an assessment panel via the upcoming regulations, the following aspects should be taken into considered:
- Complexity
- Scale
- Conflict with the Planning and Design Code
- Current Schedule 10 issues

- Assessment Categories

The following comments are made in relation to the questions raised through the discussion paper pertinent to assessment categories.

The current scope of exempt development should not be expanded to capture further modern and common domestic structures.

In relation to potentially expanding the scope of development types which should require building consent only, part 1 of Schedule 4 of the Development Regulation 2008 could be a starting point.

Development assessment planners have felt that their assessment and tick of approval for complying work which meets all relevant planning criteria (particularly verandahs, carports and similar structures) is superfluous.

It is difficult to provide comment in relation to circumstances where a blanket approach could be applied to determine if an assessment panel should become the relevant authority. However any application which receives a representation made against it, could potentially qualify for a panel assessment.

Principles which should be considered when categorising applications as Impact Assessed, both Restricted and Impact Assessed kinds of development could include:
- Seriously at variance with the Planning and Design Code.
- Development which exceeds the capacities of existing infrastructure.
- The requirement for an Environmental Impact Statement.

In terms of how restricted forms of development will be assessed, the inclusion of referrals to agencies such as the Environment Protection Authority and Department for Environment and Water may be of assistance, if not essential.

The advice of professionals beyond the skill set of urban planners is enormously beneficial and an integral part to a truly thorough assessment. The change to direction only for referral agencies is considered an improvement, as advice for regard could previously be disregarded during assessment.

It is not considered appropriate to defer a referral to an agency as there may be issues which are not under the jurisdiction of the Planning and Design Code, nor within the skill set of an accredited professional assessing an application. Unless advice is obtained from the agencies, it is possible the development should not have proceeded and the level of risk is increased exponentially.

Relevant authorities (including accredited professionals) should not be allowed to disregard the requirement to provide mandatory information listed by the regulations/code/practice directions.

It is considered appropriate that referral agencies and/or assessment panels be permitted a single request for additional information, separate to the request of the relevant authority. This is considered in line with current authority limitations.

In instances where an amendment has been made to a proposal, it also seems quite appropriate for a relevant authority to request further information where said amendments have in fact raised more questions and caused confusion.

Quality assessments completed in sensible time frames are largely a result of clear and comprehensive information being provided by applicants to the relevant authority. It is expected that the ePlanning system will reduce deficiencies in submitted documentation. The retention of the current Schedule 5 provisions under the Development Regulations 2008 is supported to ensure Deemed To Satisfy development application fidelity.

**Preliminary Advice**

Regarding the giving of preliminary advice and the question of whether there should be a formal process, the provision of preliminary advice to applicants, especially regarding significant projects, is a great and useful tool however, it may be best if the process remains informal.

This is considered appropriate because of the following:

- It may promote the practice of 'Planner Shopping' where people will seek differing views through preliminary advice.
- Applicants are likely to change plans (if they have plans) between receiving preliminary advice and lodgement, as a result potentially altering assessment pathways and creating angst.
• Decision Time Frames

The timeframes currently enforceable under the *Development Act 1993* for merit developments would appear to be appropriate. There should be no reduction of time in the transition to the Code.

Of note is the lead time required to present applications to the Council Assessment Panel, which does not currently trigger a clock stop. In view of the expected increase in applications and the introduction of appeals going to the CAP, especially with the proposed "deemed consent" implementation, it is suggested a clock stop or extension of time be applied in such instances.

Council remains strongly opposed to the concept of deemed consent as it will result in additional financial and resourcing pressure on local government, with expected increased legal fees and staff attendance caused by court action if an applicant serves notice under Section 125 of the Act.

The current "deemed refusal" process works well, promoting negotiation with applicants to achieve good outcomes. The new process will enable applicants to easily serve notice on the relevant authority, even if the development is unsatisfactory, which will require relevant authorities to defend their position.

Should deemed consent remain in the Assessment Pathways, there should be stringent provisions in the ePlanning system to ensure the relevant authority is aware of the imminent expiry of the prescribed time frame.

Decision timeframes in the *Development Act 1993* are considered mostly appropriate except for the assessment of large scale land divisions, which involve a higher level of consideration and negotiation with developers.

• Public Notification

It is considered appropriate that the relevant authority should be responsible for the sourcing and placement of the notice on the subject land for public notification. However this is anticipated to come at a substantial cost, which should be reimbursable ultimately by the applicant.

As it will be difficult to monitor the placement of signs for the prescribed period and that they are not vandalised, removed or become illegible, photo evidence is likely to play a crucial role throughout this process.

Perhaps the concept of sign vandalism and/or premature removal could become an offence and legislatively enforceable. This could potentially act as a deterrent. In regards to the length of time a sign should be placed on a portion of land, it would not be inappropriate to propose a notification period of 20 business days.

2. Accredited Professional Scheme – Draft

In line with Council's previous feedback, we acknowledge the growing trend towards occupation groups seeking to develop accreditation schemes to enhance operations and recognise best practice.
Although mention is not made in this round of technical discussion papers or draft regulations, Council wishes to reiterate that it remains opposed to the possibility of the private sector acting as a relevant authority for land division under any circumstance.

The Town of Gawler is of the opinion that all land division applications should only be assessed by a Government organisation (State or Local). The notion of private certification entering into the realm of land division is concerning and needless. We are of the opinion that it is unlikely the way in which the current system operates (all land divisions assessed by Government) is discouraging developers to subdivide land.

The drastic increase in the role of private certification in the planning system is of great concern. It is considered naïve to think that private certifiers will remain impartial in their decision making, particularly when a client is paying for their services and ultimately a favourable result.

This also opens the door for applicants to ‘Planner Shop’, an exercise where applicants shop for the decision they desire. In addition, concern remains in relation to associated costs for accreditation, which will have an impact upon all individuals in the profession, as well as businesses and the public sector.

Further to the above, Council provides the following comments in relation to the Draft Regulations:

- The Regulations permit the Chief Executive of DPTI to vary the competency requirements for accredited professionals from time to time. The wording at present does not require the Chief Executive to consult with anybody prior to doing so. It would be inappropriate not to consult on this matter and, as a result, it is suggested the draft Regulations be amended to include a mandatory consultation period for any variation to competency requirements. This will hopefully assist with ensuring the requirements are in line with industry expectations.

- The Regulations remain unclear to as whether a person can hold multiple levels of accreditation, or if a higher level of accreditation can undertake the roles of a lower level. For example it would make sense for a Level 1 Assessment Manager to be able to sit on a Council Assessment Panel without having to acquire another/separate level of accreditation. However it may not be appropriate that a panel member accredited at Level 2 be authorised to carry out the functions of a Level 3 Accredited Professional. Further to this, clarification is required as to whether there is an expectation that future planners will be working their way up through the levels, or if they may apply for any level, assuming they meet the requirements.

- The Regulations discuss the requirement for accredited professionals to maintain and retain records of Continuing Professional Development (CPD) for 6 years after the end of a CPD period. Is it envisioned that the ePlanning portal will provide a tool for this type of data collection and storage, similar to what is available through the member’s portal of the PIA website? This would otherwise be an onerous task for professionals to maintain. A central location where such data and information pertaining to CPD can be uploaded and kept track of would be of benefit to all involved.
The Draft Regulations state "An accredited professional must ensure that a periodic audit is completed at least once in every 5 years". Additional guidance should be provided in this respect as to who is required to commence this audit process. Clarification is sought as to whether it will be the responsibility of the accredited professional to approach the authority to instigate the process, or that the authority through its register will alert professionals as to when their audit will be commencing.

Part 8 Regulation 29 speaks to accredited professionals not being permitted to assess any development "if the accredited professional is employed by any person or body associated with any aspect of the development". This however does not apply to an officer or employee of the Crown. Does this mean that Council employed planners are unable to assess Council applications? This would be interesting, as a similar clause was removed from the Development Regulations 2008 a few years ago, as small tedious development applications had to be sent to SCAP for consideration. Some additional thought around this matter would be beneficial as it would be helpful if Council employed planners could assess minor applications on Council's behalf.

In instances where an employee (planner) of Council is challenged and a decision is appealed to the Environment, Resources and Development Court, it is our understanding that the case will be heard as 'appellant vs name of accredited professional or assessment manager'. In cases where an assessment manager of a council is delegating his/her powers to other council planners (who are not accredited) and these decisions are being challenged in court, is there opportunity for the case to be heard as 'appellant vs assessment manager of said Council'? This may aid council appointed Assessment Managers to remain steadfast in good planning decisions against which an appeal has been lodged and alleviate the fear of having one's name incessantly run through the courts for decisions which may have not been made by the individual.

At present, the draft Regulations speak solely to quantitative requirements in terms of the amount of experience (number of years) to acquire accreditation. Will there be any qualitative requirements for planners to meet? Or is there any vision for qualitative assessments for planners who do not meet the experience requirements in terms of years, however wish to become accredited.

There is confusion in the industry regarding the term 'Assessment Manager', what the exact role of an 'Assessment Manager' will be and whether this title can be held by a private certifier. There appears to be merit at this point in time to remove the associated title of each accreditation and simply leave it as Accredited Professional Level 1, 2, 3 or 4. In addition to this, further guidance in relation to how many 'Assessment Managers' a Council can employ would be of benefit to Local Government.

Council is of the opinion that the auditing authority should be an independent body which sits outside of the State Government.

Level 1 – 3 Building Surveyors follow the accreditation scheme of our national body AIBS but Level 4 is new and has not been recommended by AIBS. Level 4 represents a major benefit to rural/regional councils in that more inspections can
be undertaken at a reduced cost. The downfall is Level 4 is only able to inspect residential Class 1 and Class 10 buildings including swimming pools. The major concern is the attainment of competency and a Level 4 would still require supervision from a qualified Level 1 – 3 Building Surveyor to maintain a high level of knowledge and support. With the unclear future of the number of inspections, hold points and the potential 100% inspections, a Level 4 appears to have the potential to reduce the burden on the current Building Surveyors.

- Typo in section 15 part 4.

- Typo in Part 6 – Complaints section 27 (13).

3. South Australia’s New Planning System Performance Indicators Discussion Paper

The notion of detailed and readily available statistics being accessible online is considered a positive outcome and a good way of assessing trends in the planning and development industries.

On the down side, any user with access to such material could manipulate statistics in a manner to skew perspective. This is something which all Councils and the State Government will have to deal with as this system comes into effect. Nevertheless, it should not detract from the positive benefits such a system can produce.

Council believes data in relation to the following should be collected and monitored through the ePlanning portal:

- Dwelling type
- Categorisation of development
- Land size/LOTS created
- Number of representations made
- Refusals
- Permits – number/type
- Land use
- Change of use
- Densities
- Demolition
- Trees removed
- Infill/greenfield
- Heritage reuse/land use
- Affordable housing
- Car parking provision
- Amount of open space vested
- Building costs
- Assessment timeframes
- Post approval conditions applied/carry out

The Town of Gawler wishes to thank the Department of Planning, Transport and Infrastructure and the State Planning Commission for the opportunity to provide feedback on these papers and draft regulations.
If you have any questions or would like to discuss this letter in further depth please do not hesitate to contact Ryan Viney, Manager Development, Environment and Regulatory Services on [redacted].

Yours faithfully

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Mayor – Town of Gawler

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