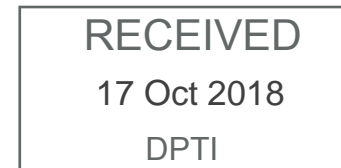


Assessment Pathways: How will they work?

City of Tea Tree Gully Response



Question	Comment
Relevant Authorities	
<p>1. 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?</p>	<p>The level of experience of the relevant authority, the extent of planning judgement that must be exercised, the potential impact of that judgment call, and whether the application requires public notification. Applications that receive valid representations should be determined by an assessment panel to ensure independence and transparency in decision making.</p>
Assessment Categories	
<p>2. Should the current scope of 'exempt' development be expanded to capture modern types of common domestic structures and expected works?</p>	<p>Yes, where the impacts on adjoining properties would be minimal. Some ideas include: cubby houses, aviaries, temporary shipping containers or storage 'PODS', solar panels on tilted frames at the rear of dwellings, privacy screens, <i>Agonis flexuosa</i> tree species (but consider including <i>Corymbia</i> species, which are considered to have a greater contribution to amenity/character), and a greater range of exempt development in the Golden Grove policy areas.</p>
<p>3. Should the current scope of 'building consent only' development be expanded to allow for more types of common development with minor planning impacts?</p>	<p>The current scope is considered to work so would suggest any expansion of building rules only applications be limited to where impacts on adjoining properties would be minimal.</p>
<p>4. How should the scope of a 'minor variation' to deemed-to-satisfy development be defined?</p>	<p>A practice direction must be issued to make it very clear what defines a 'minor variation', as opposed to relying on case law, which has varying interpretations. Consideration could include a percentage variation from the quantitative criteria and the number of variations within the application. Anything approved as a minor variation beyond the definition of a minor variation should render the consent invalid due to the incorrect assessment pathway being followed.</p>
<p>5. 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?</p>	<p>Consultation on anticipated forms of development should be weighted at the front end of the system via the Community Engagement Charter. Public notification during assessment should only occur where a use or form of development is not anticipated in the zone. For example, residential structures (including dwellings) within a residential zone should not require public notification if the proposal meets certain</p>

	public notification parameters (which could be reasonable variations to deemed to consent criteria) such as height, setbacks, length of construction on boundary, overshadowing and sufficient design solutions for privacy.
6. What types of performance assessed development should be assessed by an Assessment Panel?	Developments that are publicly notified and receive valid representations objecting to the development, and potentially development over a certain development cost as these developments generally more complex and have the greatest impact on the community.
7. What types of principles should be used when determining 'restricted' development types in the Planning and Design Code?	The extent of adverse impacts on the immediate locality and local area in general.
8. How should restricted development be assessed? What other considerations outside of the Code should be taken into account?	Council should have the opportunity to have its say on a proposed restricted development within its area. The standard notification period would not provide sufficient time for Council administration to review the proposal and prepare a representation for endorsement by Council.
9. What scale of development and/or impact types would be suited to the impact assessment (not restricted) pathway?	No comment.
Public Notification	
10. Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?	Assessment managers acting for a Council, or their delegates, should have the capacity to determine publicly notified applications if no representations in opposition to the development were received.
11. Who should be responsible for placing a notice on the subject land?	The applicant should be responsible for placing the notice on the subject site, however the relevant authority should provide the sign, upon payment of a fee, to ensure it meets minimum standards and to coordinate the placement of the notice on the subject land with the letters to be sent out to adjacent land owners/occupiers.
12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?	This is a difficult one because Council staff are unable to monitor the sign for the whole notification period. Relevant authorities can require dated photographic evidence and a statutory declaration from the applicant stating that the sign has been placed on the main frontage of the subject site and will remain in position for

	the duration of the notification period. Penalties should be in place if it is found that the sign had been removed from the site prior to the notification period closing.
13. 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?	The duration of the public notification period should reflect the type of development proposed and the extent of potential external impacts. The period of notification should be extended for more complex applications (minimum 21 days for performance assessed applications) to enable neighbours the time to fully consider the application, particularly because representors will not have a right to be heard at a CAP or to appeal a decision. The period of advertising should be further extended during holiday periods (Christmas/New Years).
Provision of Information	
14. 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?	The minimum information requirements in Schedule 5 are not considered necessary for every type of development in order to make an informed decision. Minimum information requirements should be specified as per development class.
15. 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?	The minimum information requirements for the class of development shouldn't be discretionary, unless there is some flexibility built into the regulations on the type of information that can be dispensed with and under what circumstances. This places the onus on the applicant to provide a complete application at the time of lodgment, which will enable a smoother assessment process.
16. Should a referral agency or assessment panel be able to request additional information/amendment, separate to the one request of the relevant authority?	Yes a referral agency should have the opportunity to request further information, particularly since the agency will be 'directing' a relevant authority on a particular aspect of assessment, and it will need to be able to defend this decision in the event of an appeal. Assessment panels are a relevant authority in their own right and should also be able to request further information to enable it to make a decision on the application.
17. Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?	Yes, this is definitely required to ensure a robust assessment of an application. Council planners regularly receive amendments from applicants that do not address the initial matters raised, are inconsistent with other plans within the same application, and raise further questions as a result.

Outline Consents	
18. How long should an outline consent be operational?	Similar to the current Development Plan Consent – 12 months. Extensions of time could be sought if need be.
19. When, where and for what kind of development would an outline consent be appropriate and beneficial?	Outline consents are likely to be most applicable to inner-metro Councils and regional centres where certainly surrounding maximum building heights would guide possible development. Curiously, if building heights is an appropriate use of an outline consent, it is unclear whether this application should require public notification as often the source of concern for neighbours is building height.
20. What types of relevant authorities should be able to issue outline consent?	It depends on when, where and for what kind of development an outline consent be appropriate. Concern is raised if an applicant does not have to return to the same relevant authority for their planning consent.
Referrals	
21. What types of development referrals should the regulations allow applicants to request for deferral to a later stage in the assessment process?	Any referral that is fundamental to the determination of a development proposal should not be deferred. It is understood that the Planning and Design Code will guide a relevant authority in determining whether a referral is necessary, and the idea is to reduce referrals to only where direction is required. That being the case it is considered all referrals will be integral, and therefore there shouldn't be an option to defer a referral.
Preliminary Advice	
22. 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?	There is concern that formal preliminary advice would be seen as 'pre-approval' of an application where not all aspects of a development have been considered. It could also result in (for developments where there is a choice) relevant authority 'shopping' i.e if an applicant doesn't like the advice of one relevant authority, they may go to another that has a 'looser' interpretation of the relevant provisions.
23. Should there be a fee involved when applying for preliminary advice?	Yes, providing ongoing preliminary advice is a time consuming exercise, and a fee would to help recover costs associated with providing this service.

Decision Timeframes	
<p>24. How long should a relevant authority have to determine a development application for each of the new categories of development?</p>	<p>This is difficult to answer without the detail of the process and types of applications in each category. However, considering the deemed consent provision, time frames should be reasonably expanded. The number of weeks an application is required to be on public notification should be added for applications that require public notification. An assessment panel should also have longer to determine an application given most panels meet monthly, and there is a lead in time to enable preparation of a report.</p>
<p>25. Are the current decision timeframes in the <i>Development Act 1993/Regulations 2008</i> appropriate?</p>	<p>The timeframes that currently exist are rarely tested as it is not generally in the best interests of the applicant, due to the deemed refused outcome, however under the new scheme this will completely be reversed. Timeframes for complicated planning applications can easily exceed eight weeks due to the time taken for external agency referrals, public notifications, multiple requests for amendments/information and the lead in time required to prepare a report to be presented at a monthly CAP meeting.</p>
Deemed Planning Consent	
<p>26. Should a deemed planning consent be applicable in cases where the timeframe is extended due to:</p> <ul style="list-style-type: none"> - a referral agency requesting additional information/amendment - absence of any required public notification/referral - any other special circumstances? 	<p>The concept of deemed planning consents is not supported. The reasons are largely because there are many aspects of the timeliness of a planning assessment that are outside of the control of the relevant authority, and an automatic consent on these applications does not promote good planning outcomes. The return of external referrals, public notification, the frequency of CAP meetings and the lead in time required for agenda preparation, incomplete, inconsistent and even misleading information provided by applicants, and the time it takes for applicants to return requests for further information, are all factors in the timeliness of assessments. Applications that are being prepared to be presented to CAP with a refusal recommendation are particularly vulnerable, due to the timing of the CAP and the incentive for an applicant to apply for a deemed-consent.</p>
<p>27. What types of standard conditions should apply to a deemed consent?</p>	<p>Again, deemed consents are not supported, and it's difficult to see how standard conditions can address the issues an application may have and which may have</p>

	resulted in the delay of the assessment in the first place.
Conditions & Reserved Matters	
28. What matters should be addressed by a practice direction on conditions?	No comment.
29. What matters related to a development application should be able to be reserved on application of an applicant?	Only matters that are not fundamental to the development, and there is a certain chance of negotiating an acceptable solution.
Variations	
30. Should the scope for 'minor variations' - where a new variation application is not required - be kept in the new planning system?	Yes there should be scope for very minor amendments to be dealt with as 'minor variations' without the need for another application. There should be a clearer process and criteria for this outlined in a practice direction to ensure consistency amongst all relevant authorities. From experience, applicants constantly push the boundaries of what should be considered a 'minor variation'.
31. Should a fee be required to process 'minor variations'?	Relevant authorities, or delegates, are still required to consider whether a variation is minor, the time for which is worthy of monetary compensation. A fee would formalise the process and provide an incentive to consolidate the number of minor variations being proposed per application.
Crown Development and Essential Infrastructure	
32. What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current Development Regulations 2008)?	No comment.
33. Are there any other forms of development/work that should be included in the definition of 'essential infrastructure'?	No comment.

Other comment –

- Consultation under the Charter should occur on practice directions given their role in the new system.