72 Woodville Road, Woodville
South Australia 5011
PO Box 1, Woodville SA 5011

T 08 8408 1111
F 08 8408 1122
charlessturt.sa.gov.au

16 October 2018

RECEIVED
17 Oct 2018
DPTI

Rhiannon Hardy
Project Lead, Assessment Pathways
Department of Planning, Transport and Infrastructure
GPO Box 1815
ADELAIDE SA 5001

DPTI.PlanningEngagement@sa.gov.au

Dear Rhiannon

Council Comments on the Assessment Pathways Discussion Paper

Council thanks you for the opportunity to comment on the Assessment Pathways Discussion Paper. It is appreciated that the introduction of the Planning Development and Infrastructure Act 2016 (PDI Act) is complex and driven by tight time frames for implementation.

Council's detailed comments about various aspects of the assessment pathways and associated processes are provided in an attachment to this letter.

In working through the most recent suite of information released for comment by 17 October, including this paper and the Draft Accredited Professionals Scheme, it has become apparent that there is considerable scope to widen the number of authorities impacting planning outcomes to multiple players at varying times in the development of detailed documentation for a single planning project. There is also potentially scope to force a deemed planning consent for a form of development that should have been refused. In particular Council is concerned that the provisions relating to assessment of elements of a consent, outline consent and deemed consent are fraught with problems and need to be revisited in the PDI Act.

Should you wish to discuss this advice please contact Julie Vanco, Manager Planning and Development on [redacted] or by email at [redacted].

Yours sincerely

Bruce Williams
General Manager City Services

18/280723

Assessment Pathways – Technical Discussion Paper submission	
Assigning assessment work to a relevant level of authority 1. What should be considered when assigning relevant authorities?	Ensuring the right level of experience is applied to assessment work is critical to the success of this new system. It is difficult to break down what type of land use application should be considered at what level without the context of the design standards and level of variation from the standards that can be expected within the Planning and Design Code. In the first iteration it would be best to limit variation from the current scheme of what can be privately certified while practitioners become familiar with the Code and how it is applied. An accredited person appointed to assess **deemed to satisfy** development should not be able to endorse variations from the standards within the code. Where the development has not met a standard this becomes a **performance assessment** of those elements and this should sit with a Council Assessment Panel or Assessment Manager. Current experience has indicated that planning private certifiers are prepared to endorse significant variation from the complying standard as a minor variation which is just not the case and thus the new system should ensure that this sits at a higher level. Recent examples include varying setbacks for upper levels by 2m and reducing street setbacks by 2m. When challenged that this wasn't minor they indicated they thought that would be our position and the development was lodged for a merit assessment.

Section 3 – Categories of Development (pages 26 & 32)	Without knowing the policy context in the pending P & D Code, the use of the diagrams in the Discussion Paper to highlight a 'Deemed to Satisfy" example of a dwelling as only single storey can be misleading. Two-storey dwellings are considered the 'norm' for dwelling developments, including complying development now, and thus should be used to indicated what might be captured at this level.
Assessment levels **Accepted development** Code Assessed - **Deemed to Satisfy**	**Accepted Development** - This is currently known as building rules only assessment under Schedule 1A and for minor structures is a reasonable method of streamlining the assessment process to only requiring building rules approval. If this was to be expanded it could include other minor domestic structures like aviaries, cubby houses and cat runs of a particular area and height. **Deemed to Satisfy** (no notification) – This is similar to the current complying options for development and already includes two storey built form for new dwellings. Information released in relation to this element should be clear that there is not going to be consultation on standard residential development up to and including two storey built form. Much of what has been released to date implies that this is largely single storey but that is not the case. Deemed to Satisfy provisions should be mandatory and no minor change should be allowed. Where a standard hasn't been met this should fall under performance assessed and should sit with an Assessment Manager or CAP at this time. Once the Code is established and has been operational for a reasonable period of time this could be revisited and possibly sit with Accredited Professionals under defined circumstances.

- Performance Assessed	**Performance assessed** It is difficult to make comment on what should and shouldn't be notified for performance assessed development when we don't yet have the standards that they are expected to meet. Would it be automatic that where certain standards haven't been met it requires a notice or could there be a sliding scale of variation that ultimately triggers the notification?
Public notification	It is unclear who will be responsible for putting up the sign required on the land and ensuring/checking-up if the signs are in place during the notification period. If it is to be the CAP or Assessment Manager then a suitable fee would need to be applied to cover the cost of the sign. It would also need to be in a form that is easy to produce so that preparing the sign for the notification doesn't unreasonably delay the ability to commence the notification period. Based on a recent DPTI workshop it would seem that the authority was supported as the most appropriate body to install the sign rather than the applicant. Consideration needs to be given to the impact removal of the sign part way through the notification period will have on the validity of the notification process. Third parties have often indicated that 10 business days isn't long enough to thoroughly prepare a submission on an application particularly when the proposal is complex with several technical reports. Given submissions will need to be clearly linked to a planning issue to have validity it is important that adequate time is given for this to occur. There are also issues with delivery of letters by Australia Post delaying receipt of the letter in the first instance so 15-20 business days may be more appropriate for the submission.

	An Assessment Manager or CAP should have to be the authority for any application where notification was required. This will ensure that all issues are more completely considered at a more experienced level of professional. Assessment Managers should have the capacity to determine publicly notified applications where representors do not wish to make a verbal submission. A number of applications that are publicly notified are currently determined under delegated authority as the issues have been addressed or the representation is in support of the proposal. Assigning all public notified applications to Panels will be very inefficient.
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?	Current levels of information required are adequately outlined for building work in the current Schedule 5 but it should be clear that this is also required for planning assessments. It could be reasonable to create a sliding scale of information depending on the complexity of the proposed development. For example a simple domestic structure may have more simplified site plans and elevations with limited technical information while a more complex multi storey development will need to provide more detail about the development, technical reports and locality plans.
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?	An authority should be able to dispense with the provision of information where it may not add value to the level of assessment required.
17. Should there be an opportunity to request further information on occasions where amendments to proposal plans raise more questions/assessment considerations?	If an application is amended there should be scope to ask for additional information by an authority if new issues are now a factor that weren't originally part of the application. This should also be seen as restarting the application assessment time frame so that an authority is not pressured to issue a deemed consent simply because they are now needing to take more time to

	consider further design aspects as a result of amendments by the applicant.
Referrals	Ability for applicants to defer referral as a reserved matter is dangerous. How will critical issues be properly known and addressed if referrals have not occurred and are treated as a reserved matter. Given those referred under this Act will involve a direction about the decision back to the authority it is unclear when this could ever be a reserved matter which may result in a direction for refusal after a planning consent was already issued.
Deemed Planning Consent 26. 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?	This option in the Act is fraught with danger. Ideally this should be revisited and the Act amended to revert this to an automatic refusal not approval. If there is no change the following outlines issues with the concept; Who will be checking that the required timeframe for a decision has actually been reached to enable the trigger of this option? The ePlanning system should be able to provide clear timeframes from lodgement being accepted, requests for information and receipt of responses to these requests and preclude the submission of this request where the criteria has not been met. Any application where additional information is requested by the authority or a referral agency should not be afforded this option. This option removes likelihood of staff negotiating with an applicant because we risk an automatic approval. Likely to refuse an application earlier as a result rather than work on a suitable approval outcome. There is also a risk that an applicant will indicate that they are working to address design issues, this technically doesn't stop the assessment time, and they then submit for a deemed consent outcome.

	Commercial uses such as restaurants, hotels etc should be excluded from this option. There is a risk that this option could be exploited by developers and some authorities. For example, where a private planning practitioner has a regular customer that is core to their business success they may be pressured to allow an application to run to this point whereby the applicant can trigger a deemed consent and if the authority doesn't challenge it, it will stand as an approval. The ERD Court could get congested with this type of matter and there will be considerable legal costs involved with quashing the consent. This hasn't happened to date because they get a deemed refusal and would rather work with the authority for a positive outcome that take up this option. The deemed consent is far more enticing and may result in very poor planning outcomes.
27. What types of standard conditions should apply to deemed consents?	Standard conditions for this type of consent should limit them to having to meet the deemed to satisfy standards of the Planning and Design Code.

Outline consents	Like the comment previously in relation to Deemed consent this option for an outline consent is problematic and the Act should be amended to remove this option. If they are to remain there is very little information about how this will function in the new system. It is hard to accept/issue an outline consent for a building height or footprint based on broad concepts that then binds future approvals with perhaps critical issues becoming more evident because of more detailed information at a later date. The deemed to satisfy provisions could perhaps be the basis for the outline consent and subsequent approvals are then reliant on more detailed assessment where they may breach the deemed to satisfy provisions. These should only be assessed by an Assessment Manager or CAP given they will bind a built form outcome moving forward and may be associated with more complex development proposals. The notification process may require notification of an outline consent application for a particular element such as height which will only confuse the public. They are more interested in detail around windows and overlooking typically than a basic shell view of the building concept. What would be the grounds for refusal of an outline consent application? Can they appeal this decision? What documentation would be required for outline consent? Can we condition outline consent? Reserved matter? Is there referral? Timeframe to assess 'outline consent' and how long are they valid for?
Staged consent 102 Matters against which a development	There is concern over different authorities being involved with the one planning outcome due to elements of the application being separated off under

must be assessed *(4) A relevant authority must allow any matter specified by the Planning and Design Code for the purposes of this subsection to be reserved on the application of the applicant.* *(7) To avoid doubt, if a development involves 2 or more elements that will together require planning consent, each element may be assessed separately (including by different relevant authorities) and granted a planning consent with respect to that particular element.*	102(7). How is this managed, identified, limited or ultimately resolved so that an element approved on its own doesn't conflict with the achievement of other design outcomes or land use definitions thereby changing its assessment pathway. As these can be done in any order it risks inappropriate decision outcomes without all relevant aspects known. All consents need to be visible on the Portal. Does the first application where the planning consent is being broken into elements need to define the elements that will be assessed individually? Concern over integrated mixed use development that share facilities and staging of elements. This should not be allowed. Concern over getting building consent before planning consent and the risk that the development will commence on site even though a planning decision and development approval have not yet been issued because they will have stamped structural plans to work with. There are regular problems now with them having to check a building rules application against a planning consent that has been issued and making sure it is consistent with the planning consent. This system means they don't even need to sight a planning consent because they can issue their decision first. There will be a lot of rework and correction as a result of this approach required by Council with limited fees associated with the administrative tasks required. Leaves the development approval process open to conflict and differences of opinion. The Act should be revisited and this section amended to require a planning decision prior to building rules and to remove the

	elements option under part (7) of Section 102.
Design review	This process should only be used in very limited circumstances because it can lead to quite a lot of time and money preparing documentation for review that may be supported from an architectural perspective but it has failed to deliver on the design code standards and thus still struggles to receive a planning approval.
Building reform program	There is currently a primary focus on planning and not building with the implementation of the Act. Building reform also requires urgent consideration.
Preliminary Advice	It is reasonable for a relevant authority to provide preliminary advice on a proposed development much like the current ability afforded to referral agencies. It would need to be made after a commitment by the applicant to subsequently lodge with that authority so that they do not shop around for the answer they prefer which does occur with building rules applications presently. There should also be a fee for this service as it can at times involve multiple iterations of a plan and technical experts that add cost to development assessment but aren't able to be recovered at present.
Decision timeframes 24. How long should a relevant authority have to determine a development application for each of the new categories of development? 25. Are the current decision timeframes in the Development Act 1993/Regulations 2008 appropriate?	The current timeframes for complying (deemed to satisfy development) are reasonable for a planning only decision which is currently 2 weeks. The merit assessment time frame for planning only applications of 8 weeks is adequate for more straightforward applications but is inadequate when there are complex matters to resolve such as contamination, technical engineering issues such as groundwater impacts or public notification with representations and a panel meeting decision required. The more complex matters should have 12 weeks as the assessment time frame. All assessment timeframes should exclude all time waiting for additional information from the applicant.

6.3 Local Heritage	Agree with the ability of a land owner to appeal to the Court against a decision to designate a new local heritage place into the Code. Agree that this should not apply to existing local heritage designations under existing development plans as these have already undergone due process. The Paper in this section is silent on existing Historic Conservation Areas (HCAs) and Contributory Items which is prevalent in the City of Charles Sturt. The existing HCAs and its associated Contributory Items should also be carried over from the Development Plan to the new Code without the ability of appeals.
Variations	The current scope for variations should be retained and there should be a fee for each variation. At present we can receive 100's of these for a wide range of changes and receive no payment for the review and processing of them.
Essential Infrastructure	Telecommunication facilities such as mobile phone towers need to be considered in relation to essential infrastructure and when these need a regular planning assessment (such as heritage or character areas) versus when they could be excluded.