15 March 2019

Minister Stephan Knoll, MP
Minister for Planning
Level 12, 136 North Terrace
ADELAIDE SA 5000

Email: ministerknoll@sa.gov.au

cc: Email: DPTI.PlanningEngagement@sa.gov.au

Dear Minister

Submission - Planning, Development And Infrastructure (General) Development Assessment) Variations Regulations 2019

Thank you for the opportunity to provide feedback on the above-mentioned Regulations. Council notes that the Draft Regulations were released for public consultation on 16 January 2019 with a deadline for comment of 1 March 2019.

Unfortunately, this was insufficient time for administration to report this matter to Council and accordingly this correspondence which was endorsed by Council at its meeting on 12 March 2019 is submitted post the formal consultation period. Council has therefore elected to liaise with you direct.

We are disappointed with the timeframes given to Council and the community to comment on the Development Regulations. The draft Regulations are of critical importance to the day to day development assessment operations of Council and to the community who utilise this service. We note the longer timeframes to comment on various discussion papers released as part of the new planning framework, notwithstanding these have considerably less practical application than the draft Regulations.

Notwithstanding the above, the Draft Regulations overall provide for a number of refinements and improvements to the current legislative framework. It is clear that considerable effort has been given to addressing weaknesses with the current legislation. Notable improvements that are supported by Council's administration include the following:

- clarification that the change in classification of a building is prescribed as building work;
- public consultation requirements for performance assessed developments (noting certain concerns outlined further within this correspondence);
- Essential Safety Provision requirements having greater clarity and ability for a relevant authority to expiate where not complied with;
- additions to Schedule 4 “Exclusions from definition of development.”

CIVIC CENTRE COUNCIL OFFICES CONTACT FOLLOW US
163 St Vincent Street, Enfield Library 1 Kensington Crescent, Enfield
PO Box 110, Greenacres Library 2 Fosters Road, Greenacres
PO Box 5015
ADELAIDE SA 5015

P (08) 8405 6600
E service@cityofpae.sa.gov.au
www.cityofpae.sa.gov.au

@CityofPAE
Council does however, raise some concerns with the legislative framework and these concerns are outlined below:

Applications where the State Planning Commission is the relevant authority.

The proposed legislation intends to limit Council's involvement as a referral agency for comment on applications determined by the Commission as referenced in Clause 23(3) of the Draft Regulations outlined below:

"The following matters are specified for the purposes of a report under sub-regulation (2)(b):

(a) the impact of a proposed development on the following at the local level:
   (i) essential infrastructure;
   (ii) traffic;
   (iii) waste management;
   (iv) stormwater;
   (v) public open space;
   (vi) other public assets and infrastructure.
(b) the impact of the proposed development on any local heritage place;
(c) any other matter determined by the Commission and specified by the Commission for the purposes of sub-regulation (2)(b)."

It is noted that the current Regulations do not confine Council comments to prescribed matters. Councils can (and do) comment on various planning related matters, including parking provision, bulk, scale, appearance, overshadowing, overlooking, compatibility with the Desired Character Statement, impact on vegetation, etc.

The proposed legislation therefore introduces a constraint on Council's influence and input over applications determined by the State Planning Commission.

You would also be aware that certain developments within the City of Adelaide and the City of Port Adelaide Enfield also default to the Commission as the relevant authority, for example, development within specified policy areas within the Port Adelaide Regional Centre (for example: along the waterfront) and development within the Regional Centre more generally exceeding $3 million. The proposed legislation does not contemplate any referral to Council at all for these types of development.

Whilst this is no different from the current Regulations, it is noted that many of these applications are for significant waterfront developments (or developments which impact on the State Heritage Area) and are likely to be of considerable interest to Council. Council has maintained a long-held position to advocate for change in the referral status for applications affected by these provisions.

Council's administration met with the Chair of the State Planning Commission in late 2017 and subsequently wrote to the Commission, seeking formal referral status and/or the ability to influence decision-making within strategic parts of Port Adelaide. Whilst the Commission Chair was sympathetic to Council's position at the time, this request has seemingly not resulted in a change to the approach.
If the legislation is to remain as is, Council is likely to have little to no say on how these developments evolve during the assessment process unless the State Planning Commission is of the mind to undertake 'informal' referrals. We are at a loss to understand why Council would be excluded from influencing decision-making on key applications within our Council area. In this respect we believe that Council has always worked collaboratively with the State Planning Commission and the development industry on achieving positive planning outcomes recognising the need to support economic development and improve the vitality of the Port Adelaide Regional Centre. We maintain a positive relationship with Renewal SA, relevant staff at DPTI and the members of the State Commission Assessment Panel.

Accordingly, and noting our previous discussions with the Chair of the Commission, we are disappointed that our previous endeavours to have greater planning input in developments within the Regional Centre are not reflected in the Draft Regulations.

Fees and Expiations

As currently written, the Draft Planning, Development and Infrastructure (General) Variation Regulations 2019 do not provide for many expiation fees for offences under the PDI Act. Expiations are a key legislative tool to ensure compliance with planning and building regulations and must be retained if Council’s are to maintain community safety and wellbeing.

There are various avenues for expiations under the current legislation which seem to have been (presumably erroneously) omitted from the Draft Regulations. For example, as drafted, expiations cannot be issued for the following:

- a general offence for failure to comply with these Regulations (Section 129);
- failure to undertake urgent building work as directed by the Council (Sections 135 and 136);
- failure to provide notice to the owner of an affected (usually adjoining) site that an activity may affect the stability of land or premises (Section 139);
- failure to submit to the Council a copy of a certificate of insurance before the commencement of building work (Section 39);
- failure by a builder/owner to provide a Statement of Compliance (Section 146);
- failure by a builder/owner to provide a Certificate of Occupancy (Section 152);
- failure to comply with an Emergency Order (Section 155);
- failure to comply with relevant swimming pool requirements (Section 156);
- failure to comply with an Enforcement Notice (Section 213).

It may be that the Regulations will be revised (before being finalised) to include expiations, however, it is important that the above-mentioned offences are not omitted for any expiation's which may be legislated later.

Further to the above, Section 32 of the Development Regulations contemplates an applicant being able to submit hard copy application documentation to a Council whereby the Council must thereafter lodge the application on the SA Planning Portal. Whilst the ability for applicants to pursue this avenue of lodgement is commended, this should not be without the payment of a prescribed fee.
Timeframes

The Draft Regulations impose timeframes upon a Council which are considered onerous and problematic. Examples are as follows:

- Section 35 - determination of nature of a proposed development, determine who is the relevant entity to assess the application and to determine whether all information required to be lodged - has been lodged - 5 business days;
- Section 36 - request for further information - 10 business days;
- Section 56 - determining 'deemed to satisfy' development under the Planning and Design Code - 10 business days;
- Section 56 - determining 'performance assessed' development - 20 business days.

Whilst there are certain circumstances where the time to determine 'performance assessed' developments can be extended (for example where it is to be determined by the Council Assessment Panel), the primary concern with the timeframes given to determine applications is the default position whereby an applicant who has not had an application determined within the specified timeframes can apply for a 'deemed consent', whereupon (unless the Council challenges the 'deemed consent' through the Environment Resources and Development Court), the application is automatically approved. This differs from the current Regulations which do not contemplate a 'deemed consent'.

We note that you have endorsed tighter legislative timeframes to ensure timely assessment of applications by Councils'. Whilst this has validity, it needs to be balanced against recognition of the complexity of some applications and onerous repercussions where a Council has failed to meet a legislative timeframe. Put simply, the balance is not currently considered reasonable and practicable and it is plausible that this will lead to considerable litigation, legal costs and delays for all parties in the ERD Court.

Public Consultation

The Draft Regulations introduce a new requirement for a notice to the placed on the land the subject of a development application undergoing public notice. This is a commendable change from current legislative requirements and consistent with legislative requirements interstate.

However, the applicant can request the relevant authority (Council) to place a notice on the land subject to the payment of a prescribed fee.

The Regulations contemplate penalties and expiations for persons who deliberately damage or remove a notice. This provision is also commended as an effective enforcement measure.

Importantly however, the legislation is silent with respect as to who is responsible for replacing or repairing a sign which has been vandalised or damaged (and whether this should extend the public consultation period or not). Given that the Regulations contemplate either Council or the applicant erecting the sign, additional provisions should be drafted that address this issue.
Conclusion

We request that the above-mentioned issues be considered carefully. Council desires planning reforms that put the community interest’s first whilst also ensuring reasonable developments can proceed expeditiously. We feel that proposed system is not achieving this balance and is weighted in favour of hurried or biased decision-making.

We remain particularly concerned over a lack of Council influence over many development applications within the Port Adelaide Regional Centre. We recognise that applications over $3 million (within the Regional Centre) and those along the waterfront or adjacent to State Heritage Items are of strategic importance to the State, but decision making on these applications should not be without Council’s expert local knowledge contributing to ensuring informed decision-making.

Our Chief Executive Officer will be contacting your office to request a meeting to discuss this matter further.

If you have any further queries with regards to this matter please do not hesitate to contact Steve Hooper, Development Services Manager on XXXXXX.

Yours faithfully

[Signature]

Deb Richardson
Director Community Development