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Dear Ms Hardy

Assessment Pathways – City of Holdfast Bay Submission

Thank you for the opportunity to provide comments in response to the Assessment Pathways Technical Discussion Paper.

The submission below is in the form of responses to the 33 Key Questions emanating from the Discussion Paper.

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?**

   The assigning of the relevant authority should be guided by whether objections are received following notification for performance assessed proposals. If the objections are resolvable, then the proposal should be dealt with by an Assessment Manager, if not then an Assessment Panel.

2. **Should the current scope of ‘exempt’ development be expanded to capture modern types of common domestic structures and expected works?**

   The scope for exempt development is already quite broad, so it is difficult to add further types of development to the list without impinging on character issues. Notwithstanding, there needs to be a mechanism whereby the Regulations can be easily amended to accommodate other forms of development commensurate with innovation in the building industry.
3. Should the current scope of ‘building consent only’ development be expanded to allow for more types of common development with minor planning impacts?

No. It is important that a planning assessment remain an option for the majority of proposals, particularly given the limited consideration that a building only assessment gives to design and character issues.

4. How should the scope of a ‘minor variation’ to deemed-to-satisfy development be defined?

It is difficult without a performance based criteria, because there will be varying degrees of subjectivity applied in bridging this divide. Preferably there should be no dispensation provided from the deemed-to-satisfy criteria.

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?

Height, length of walls on boundaries, and building setback are contentious areas of assessment where notification should be considered in circumstances where one of these aspects breach the prescribed criteria.

6. What types of performance assessed development should be assessed by an Assessment Panel?

Applications where unresolvable objections are received following notification for performance assessed proposals.

7. What types of principles should be used when determining ‘restricted’ development types in the Planning and Design Code?

Presumably a statement about the character of a locality will be a feature of future Planning and Design Code documents. If so, then the principles should be guided by the desired future character of the locality as it relates to land use, intensification of existing land uses, proximity/relationship to natural features, density, scale and height of development.

8. How should restricted development be assessed?

Akin to the current non-complying process, there needs to be a concurrence option where a separate assessment authority can audit an interim decision prior to issuing a consent.

9. What scale of development and/or impact types would be suited to the impact assessment (not restricted) pathway?

In the case of a moderate inconsistency with the requirements prescribed by the Planning and Design Code for the individual site, then the expectation would be that an impact assessment was warranted. However, the choice between an impact assessment and restricted assessment should be clear enough to avoid any doubt of subjectivity on this issue (i.e. it either falls within the definition of restricted development or it doesn’t).
10. Should accredited professionals/assessment managers have the capacity to determine publicly notified applications?

Accredited professionals should not, whereas Assessment Managers should. It will be impossible to reconcile the need for an independent assessment with a process that empowers a proponent to engage an assessor of choice to make a decision on a development that is the subject of public objections. There is no point allowing the public to object to a proposal if a developer’s advocate is charged with the responsibility of issuing a decision.

11. Who should be responsible for placing a notice on the subject land?

The proponent. This cannot be a local government responsibility. Local government can verify the placement of the notice, but should not be responsible for its production/content/installation/removal.

12. How would that person/body provide/record evidence of a notice being placed on the land throughout the specified notification period?

The proponent will notify the local council of the installation of the sign, allowing 24-hours to verify its accuracy and compliance.

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?

Ten business days (excluding mail delivery times).

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?

This is dependent on the criteria for deemed-to-satisfy proposals. At the very least, accurate site plans, elevations, and site works plan (including location of public infrastructure and street trees).

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?

This will depend on the type of development proposed, but ideally the system should allow for the tailoring of information to suit the type of application proposed.

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. This is allowed now, albeit through a deferral process (in the case of an Assessment Panel).
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 currently the practice and ensures an informed decision making process.

18. How long should an outline consent be operational?

Three months.

19. When, where and for what kind of development would an outline consent be appropriate and beneficial?

Land division applications, where certainty as to density is sought. Land use proposals are always more difficult because the consent may be contingent on other factors (e.g. subject to survey or accurate site works plan).

20. What types of relevant authorities should be able to issue outline consent?

Only the authority that would be the assessing authority for any formal development application. The outline consent authority issued by one party should not be able to bind the actual relevant authority, if that is a different party.

21. What types of development referrals should the regulations allow applicants to request for deferral to a later stage in the assessment process?

None. The information obtained through all referrals presently under Schedule 8 of the Development Regulations is essential prior to making a planning assessment. There may be aspects of the referral advice that seek refinement at a later date, but the referral itself must precede a planning decision.

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 will be a cost and inefficiencies associated with formalizing preliminary advice. At the moment it is a quick process void of fees, paperwork and formal documentation. This process works well.

23. Should there be a fee involved when applying for preliminary advice?

If legislative change requires a formalised preliminary advice process, then perhaps 15% of the prescribed statutory fee would be an appropriate cost.

24. How long should a relevant authority have to determine a development application for each of the new categories of development?

With no details as to the types of development that can be anticipated in each category of development, this is impossible to answer. Basing the timeframes along current category lines seems reasonable however.
25. Are the current decision timeframes in the Development Act 1993/Regulations 2008 appropriate?

Yes.

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?

No, a decision by default should never take precedence over a proper and considered planning assessment. The whole concept of a deemed planning consent is flawed and needs to be revisited.

27. What types of standard conditions should apply to a deemed consent?

It is irresponsible to develop a set of conditions that are applicable to every possible development proposal. This is another reason why deemed consent is flawed and is an affront to good planning.

28. What matters should be addressed by a practice direction on conditions?

A practice direction could address conditions typically affecting dwellings and other forms of residential development, such as height, site coverage, and setback.

29. What matters related to a development application should be able to be reserved on application of an applicant?

This depends on how advanced the development application documentation is, and how liberal the assessing authority intends to be with respect to granting consent in the absence of valuable information. This is a contentious area where there will be differences between the various assessing authorities, particularly with respect to the criteria for determining what is or is not fundamental to the nature of a development.

30. Should the scope for ‘minor variations’ - where a new variation application is not required - be kept in the new planning system?

Yes.

31. Should a fee be required to process ‘minor variations’?

An administrative or lodgement fee at the very least.

32. What types of Crown Development should be exempt from requiring approval (similar to Schedule 14 under the current Development Regulations 2008)?

Akin to Schedule 14 under the current Development Regulations 2008.

33. Are there any other forms of development/work that should be included in the definition of ‘essential infrastructure’?
No, but there should be sufficient flexibility in the definition of each to cater for unforeseen or innovative infrastructure requirements.

Please contact me on [redacted] should you wish to discuss the submission further.

Yours faithfully

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